

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF OREGON

3 EUGENE DIVISION

4 ELIZABETH HUNTER, et al.)

5 Plaintiff,)

Case No. 6:21-cv-00474-AA

6 v.)

November 4, 2021

7 U.S. DEPARTMENT OF EDUCATION,)
8 et al.,)

9 Defendant.)

10 v.)

11 COUNCIL FOR CHRISTIAN COLLEGES &)
12 UNIVERSITIES, WESTERN BAPTIST)
13 COLLEGE d/b/a CORBAN UNIVERSITY,)
WILLIAM JESSUP UNIVERSITY and)
14 PHOENIX SEMINARY,)

Defendants-Intervenors.)
15

16
17
18 PRELIMINARY INJUNCTION HEARING

19 VOLUME 1

20 TRANSCRIPT OF PROCEEDINGS

21 BEFORE THE HONORABLE ANN L. AIKEN

22 UNITED STATES DISTRICT COURT JUDGE
23
24
25

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TRANSCRIPT OF PROCEEDINGS

(November 4, 2021)

(Via videoconference:)

DEPUTY COURTROOM CLERK: The District Court for the District of Oregon is now in session. The Honorable Ann Aiken presiding.

THE COURT: Oh, please be seated.

DEPUTY COURTROOM CLERK: Now is the time set for Civil Case 21-00474. Hunter, et al. v. U.S. Department of Education, et al. for a preliminary injunction hearing. If you could please introduce yourselves for the record, beginning with plaintiffs.

MR. SOUTHWICK: Paul Southwick for plaintiffs.

MR. ISAAK: Misha Isaak, from Perkins Coie, for the plaintiffs.

MR. BAXTER: Joe Baxter with plaintiffs.

THE COURT: That's -- could -- Mr. Baxter, you have an echo. So could you state your name again, and maybe we can make sure we have that clarified, in terms of the technology?

Did we lose Mr. Baxter?

MR. BAXTER: Joe Baxter for plaintiffs.

THE COURT: All right. It's good, but I just want to make sure we have him -- if he's going to talk, we have that -- okay.

DEPUTY COURTROOM CLERK: And for defendants?

1 MR. DAVIS: This is Elliott Davis for United States
2 Department of Justice for the federal defendants.

3 THE COURT: I cannot hear you. The volume is way too
4 soft.

5 MR. DAVIS: Can you hear me now, Your Honor?

6 THE COURT: No. I can't hear you. Very vague.

7 MR. DAVIS: Is this better?

8 THE COURT: Nope.

9 MR. DAVIS: We're going to call our technical
10 support.

11 THE COURT: Yeah, it's just -- it's muffled, and it's
12 faint.

13 MR. DAVIS: My apologies, Your Honor. Our technical
14 support is coming.

15 THE COURT: That's okay. We have been with ours all
16 morning.

17 Are all the other parties muted? I hear a lot of rumbling
18 noises too. When we get to the point where we move forward,
19 I -- unless you're speaking, everybody's mic should be muted.

20 MR. DAVIS: This is Elliott Davis. Is this better?

21 THE COURT: Barely. I'm watching --

22 How are you doing? Oh, yeah, you're Samantha. Why I'm
23 looking at -- so our court reporter is remote?

24 DEPUTY COURTROOM CLERK: We have Jill.

25 THE COURT: Oh, it's Jill.

1 MR. DAVIS: Your Honor we're going to try dialing in
2 from a conference phone, and we're going to do that right now.

3 THE COURT: All right.

4 IT SPECIALIST: This is our new audio connection.
5 Can you hear us now?

6 THE COURT: Yes.

7 IT SPECIALIST: We'll move that closer to our
8 attorney.

9 THE COURT: Thank you.

10 MR. DAVIS: My apologies for that, Your Honor.

11 THE COURT: That's all right.

12 MR. DAVIS: My name is Elliott Davis. I'm with the
13 United States Department of Justice. With me are my colleagues
14 Carol Federighi and Hilarie Snyder. And also joining us is
15 Carlotta Wells, Assistant Branch Director with the United
16 States Department of Justice.

17 DEPUTY COURTROOM CLERK: For Intervenor CCCU?

18 Could you please repeat?

19 THE COURT REPORTER: This is the court reporter. I
20 did not hear who just introduced themselves.

21 MR. DUNLAP: This is Jacob Dunlap. I'll be a
22 participant observer on behalf of Christian Colleges and
23 Universities.

24 THE COURT: Go ahead.

25 MR. GREY: Your Honor, Herb Grey on behalf of CCCU.

1 THE COURT: Oh, is that it?

2 MR. GREY: My colleagues Gene Schaerr,
3 Nicholas Miller, and Joshua Prince should also be on. They
4 were on.

5 MR. SCHAERR: Sorry, Your Honor. I just got booted
6 off.

7 This is Gene Schaerr, representing CCCU, and I believe
8 Mr. Grey has already introduced the other members of our team.

9 THE COURT: And they are present and on the phone?

10 MR. SCHAERR: They are.

11 THE COURT: Could they introduce themselves just so
12 we know what connections we have?

13 MR. MILLER: This is Nicholas Miller with CCCU.

14 MR. PRINCE: And this is Joshua Prince with CCCU as
15 well. Thank you, Your Honor.

16 THE COURT: All right. Is that everyone?

17 DEPUTY COURTROOM CLERK: And for the remainder
18 intervenors?

19 MR. LIPPELMANN: Good morning, Your Honor. My name
20 is Mark Lippelmann. I represent the religious school
21 intervenors, Phoenix Seminary, Corban University, and
22 William Jessup University. I'll allow my colleague, Ryan
23 Tucker, to introduce himself as well. But I want to make sure.
24 Can you hear my connection all right?

25 THE COURT: Yes.

1 MR. LIPPELMANN: Great. Thank you.

2 MR. TUCKER: And this is Ryan Tucker, as
3 Mr. Lippelmann just alluded to. I am, likewise, present as an
4 observer and represent the religious schools.

5 THE COURT: All right. Thank you.

6 As you can tell, there's a little fragility in the system,
7 and so I'm going to ask people -- you know, if you can see me,
8 I will stop people. I'm happy to use various hand signals as
9 well as speaking up when we can't hear you.

10 Our court reporter is remote, and so I'm going to count on
11 Ms. Jessup to step up when she can't hear. It's really
12 important, as well, that people keep their phone on mute
13 because the back noise is very difficult to hear. This isn't
14 the largest group of people I have had on a conference call or
15 a format like this. So I have some experience with -- when we
16 have problems how to manage those. So we'll just take it
17 slowly and make sure we get everything we need.

18 So with that said, I appreciate all the filings. I think
19 I have read everything that has come in. I'm prepared to hear
20 opening statements, and so I'll call on the plaintiffs at this
21 time for an opening statement. Unless there's something else
22 anyone wants to take up or any additional information after
23 conferral that you need to tell me with regard to the mechanics
24 or the proceedings today, I -- I'm happy to have an update and
25 happy to just begin.

1 MR. SOUTHWICK: Your Honor, this is Paul Southwick.
2 Just as a -- one preliminary matter. The parties have all
3 stipulated to authenticity of exhibits. For purposes of
4 introducing exhibits, does the Court have a preference? Do we
5 want to just deem them all admitted right now or --

6 THE COURT: Yes.

7 MR. SOUTHWICK: -- go one by one?

8 THE COURT: No. Deem them all admitted. As long as
9 everyone agrees that's the stipulation, deem them all admitted
10 now.

11 So on behalf of the plaintiffs, Mr. Southwick, you so
12 stipulate; correct?

13 MR. SOUTHWICK: Yes. Plaintiffs stipulate to that.

14 THE COURT: Mr. Davis, on behalf of the defendant,
15 DOJ, do you so stipulate?

16 MS. SNYDER: Your Honor, this is Hilarie Snyder. The
17 DOJ has stipulated to the authenticity but not necessarily the
18 admissibility of the exhibits.

19 THE COURT: Well, then I guess we have to go one by
20 one, which -- okay.

21 MS. SNYDER: Thank you, Your Honor.

22 THE COURT: I appreciate your effort, Mr. Southwick.

23 MR. SOUTHWICK: Your Honor, this is Paul Southwick.
24 We'll --

25 THE COURT: What I guess I want to highlight is I was

1 hoping we would just -- they would be deemed admitted. As you
2 know, it's a preliminary injunction hearing, and so, you know,
3 I will be able to weigh and balance the weight to give it in
4 this proceeding, but I want to be very careful of everybody
5 wanting to highlight issues that they want me to look at
6 carefully or look at differently.

7 So if that's -- if that's what the government's intent is
8 and going one at a time matters to them or they can highlight
9 it -- but I really had hoped that we would just deem them and I
10 would sort through them and give them the weight that's
11 necessary under the terms of what's available in terms of the
12 Court's review of evidence under the standard for a preliminary
13 injunction.

14 So, I guess, is that -- I understand your stipulation, but
15 I also want to make sure that you -- I've not misrepresented or
16 am misconstruing anything with the government jumping in as
17 they just did.

18 MS. SNYDER: Thank you, Your Honor. Yes. We
19 understand that the rules are -- of evidence are relaxed in a
20 preliminary injunction hearing. We're really making this
21 distinction for two reasons. One is just practical. For
22 instance, we ourselves have put in exhibits that we may use but
23 may not use, and we didn't want to burden the Court with extra
24 reading or documents that we may end up not highlighting or not
25 needing.

1 Similarly, I can't speak for them, but it appeared, for
2 instance, that others have perhaps done the same thing.
3 There's perhaps impeachment -- potential impeachment that other
4 people have put in. You know, prior testimony by potential
5 exhibits -- or by potential witnesses that seemingly may or may
6 not be relevant or come in. And so there's a lot of paper.
7 Some of which, you know, expert reports, prior testimony, would
8 be classic hearsay and, you know, both -- because they are
9 classic hearsay and potentially objectionable and also because
10 it would just mar the Court in a bunch of paper, we certainly
11 don't want to slow things down, and so we have agreed to
12 admissibility -- or, excuse me, we agreed to authenticity, but
13 we thought that the Court should consider admissibility in
14 conjunction with the witnesses' testimony.

15 THE COURT: I'm sure it will be highlighted for the
16 witnesses' testimony, but I have to tell you if your idea was
17 to reduce the amount of paper we had to go through, it might
18 have been helpful before the hearing because we have gone
19 through everything, and we may have a lot of documents that are
20 duplicates and we have managed that. We have sorted that, and
21 we've organized that. It's not unfamiliar to be buried in
22 paper in cases like this. So we have already done what work,
23 and so I hear you, and I -- you want to highlight issues with
24 regard to particular exhibits with witnesses. Fine. But
25 unless there's something more, I'm going to deem them admitted

1 for authenticity, and then you can argue or point out whatever
2 you think you need; but, you know, you all understand there's
3 the -- this is a preliminary injunction code, and so there's
4 not the strict guidance to the rules of evidence; so -- anyway,
5 with that, understood. But before the fact, paper resolving
6 these issues might have been helpful, but now that we have
7 everything here and we've already got it organized and sorted,
8 I think we have got it handled.

9 All right. Anything else?

10 MR. SOUTHWICK: Not for plaintiffs, Your Honor.

11 THE COURT: Anything for defendants?

12 MR. DAVIS: Not from the Government defendants,
13 Your Honor.

14 THE COURT: Intervenors?

15 MR. LIPPELMANN: Nothing from --

16 MR. SCHAERR: Nothing --

17 MR. LIPPELMANN: Go ahead, Gene.

18 MR. SCHAERR: Nothing from CCCU, Your Honor.

19 MR. LIPPELMANN: And nothing further from the
20 religious schools, Your Honor.

21 THE COURT: So just for clarification, how are the
22 intervenors breaking up? I mean, who is going to handle --
23 have you agreed how you're going to handle various aspects of
24 this or combined efforts?

25 MR. LIPPELMANN: Yes, Your Honor. This is

1 Mark Lippelmann for religious schools. Particularly with
2 respect to the opening statement, I'm mindful that together the
3 intervenors have 15 minutes. With the Court's permission, I
4 would endeavor to take less than half of that time personally
5 and allow CCCU the remainder to ensure that we stay within that
6 time allotted.

7 THE COURT: All right. With all that being said,
8 let's begin with the opening statement for the plaintiffs.

9 MR. SOUTHWICK: Thank you, Your Honor. This is
10 Paul Southwick. I'll be making the opening statement. I will
11 endeavor to screen share a PowerPoint presentation.

12 This worked during practice, and so hopefully it will work
13 now.

14 THE COURT: Have we been provided a copy of that?

15 MR. SOUTHWICK: Your Honor, can you see this okay?

16 THE COURT: I sure can.

17 MR. SOUTHWICK: All right. We have provided the --
18 we have circulated the demonstratives that are part of this
19 slide. We could send the PowerPoint to the Court if it would
20 like.

21 THE COURT: Yes, please.

22 MR. SOUTHWICK: Okay.

23 Joe, can you send a copy to Cathy Kramer?

24
25 ///

1 OPENING STATEMENT BY PLAINTIFFS

2 MR. SOUTHWICK: Your Honor, again, this is
3 Paul Southwick on behalf of plaintiffs. This case is brought
4 on behalf of 40 LGBTQ current and former students who attend or
5 have attended taxpayer-funded educational institutions that
6 explicitly discriminate in policy and practice on the basis of
7 sexual orientation and gender identity.

8 The plaintiffs are bringing a challenge to the religious
9 exemption to Title IX as well as a challenge to the 2020
10 implementing regulation changes that occurred during the past
11 administration.

12 So there are essentially two principal challenges. One is
13 constitutional and one is under the Administrative Procedures
14 Act.

15 So what is this case about?

16 The primary issue of this case is whether or not the
17 Constitution permits the Federal Government to fund religious
18 colleges and universities that practice invidious
19 discrimination against LGBTQ+ students. Invidious
20 discrimination is a term that you'll see frequently in the
21 briefing. And what does that mean? Well, it's essentially
22 unfair or unmerited discrimination.

23 Discrimination not having to do with someone's merit or
24 someone's dignity or worth.

25 Now, this question was asked throughout the 1960s, '70s,

1 and '80s in the context of invidious race discrimination, and
2 the Supreme Court answered this question with a resounding no.
3 So the question before the Court now is whether that should
4 also be a resounding no in the context of sexual orientation
5 and gender identity, and plaintiffs submit that it should.

6 However, beyond the larger constitutional questions,
7 there's also a more narrow question that this Court can decide
8 and still grant the injunctive relief that plaintiffs are
9 seeking. That more narrow question is whether it was unlawful
10 for the Federal Government, through the 2020 rule changes, to
11 exacerbate the harms of such funding by expanding the religious
12 exemption to Title IX and by eliminating the notice
13 requirement.

14 This goes to the heart of plaintiffs' Administrative
15 Procedure Act challenges.

16 Of note, the Government defendants, while they have moved
17 to dismiss most of plaintiffs' claims on the merits, have not
18 moved to dismiss plaintiffs' APA claims on the merits.

19 Also of note, the recent filing by the attorneys general
20 in support of plaintiffs, the amicus filing, likewise makes the
21 argument that those 2020 rule changes were unlawful.

22 And so the Court, through this proceeding, this
23 preliminary injunction proceeding, could answer the overall
24 constitutional question, or it could answer the more narrow
25 Administrative Procedure Act question.

1 Plaintiffs request that the Court answer them both in
2 favor of plaintiffs, but either one is sufficient to provide at
3 least some relief to the plaintiffs during the proceeding of
4 this case.

5 I provided this chart. What this chart does is it
6 describes the kinds of harms and stigmas that the Court is
7 going to hear about from the witnesses today.

8 The Court is going to hear from five of the plaintiffs in
9 this case, and it's also going to hear from a couple of
10 experts. The Court is going to hear a lot about individual
11 stigma and individual harms, and that is -- that's at the
12 smallest core here in this chart.

13 Those individual harms the Court will hear about are
14 suicidality, depression, anxiety, self-harm, things that the
15 individual students are feeling themselves by being members of
16 the LGBTQ community who are from nonaffirming homes or
17 nonaffirming environments. Plaintiffs are not asking the Court
18 to solve these harms or these stigmas. The Court is incapable
19 of doing that.

20 However, the next level is interpersonal stigma.
21 Interpersonal stigma and interpersonal harms, those result from
22 things like sexual assault on campus. Faculty and peer
23 harassment of LGBTQ students on campus and other forms of
24 interpersonal stigma and harms. Some of those interpersonal
25 stigma and harms are what Title IX is meant to address. It's

1 meant to provide some form of protection with respect to sexual
2 assault, with respect to harassment and other issues.

3 However, again this Court is not being called on, through
4 this litigation or this proceeding, to remedy the interpersonal
5 stigma.

6 The next level is institutional or structural stigma.
7 This is at the -- this is at the stage of the educational
8 institutions themselves.

9 Now, stigma and harm comes from openly discriminatory
10 institutional policies, such as prohibiting the admission of
11 LGBTQ students or subjecting them to discipline for their
12 relationships or their identities, lack of nondiscrimination
13 protections, and a variety of other things. These structural
14 stigmas and structural harms reinforce the personal stigma and
15 the individual stigma that the plaintiffs experience.

16 Now, again, this Court is not being called upon to make
17 any ruling or enforcement that will directly impact the
18 education -- the underlying educational institutions. It's not
19 being called upon to solve those institutional structural
20 stigmas.

21 However, the final layer here is the government and the
22 government's role in structural stigma and in exacerbating and
23 allowing these other stigmas and harms to flourish. The
24 government stigma comes from the billions of dollars of federal
25 funding, taxpayer funding, for educational institutions that

1 avowedly discriminate. It also comes from a religious
2 exemption to Title IX, which essentially immunizes these
3 educational institutions in terms of their institutional
4 structural stigma and harms. It also has to do with the
5 implementing regulations, which include the 2020 rule changes
6 that are at issue in plaintiffs' complaint. And, finally, it
7 involves the denial of an administrative process. Title IX
8 provided an administrative process, but plaintiffs are denied
9 access to that process.

10 What plaintiffs' case is about, is it is about remedying
11 and addressing the government's role in this pyramid of stigma
12 and harm, and this government ban is something that the Court
13 can address, either directly through addressing the funding
14 aspect or an order enjoining the Department of Education to
15 enforce Title IX with respect to the educational institutions
16 that plaintiffs attend.

17 By eliminating the government and structural stigma, it
18 will remove the government's stamp of approval of the
19 institutional and interpersonal and individual stigma, and that
20 is the purpose of this case, is to address that top line -- the
21 government's role.

22 As you hear from witnesses and you hear testimony today
23 and tomorrow, it's important to keep in mind what is the --
24 what are the purposes of Title IX? Title IX was enacted in
25 1972 and has been litigated significantly. In 1979 the Supreme

1 Court recognized that Title IX, like it's model Title VI,
2 sought to accomplish two related objectives. First, Congress
3 wanted to avoid the use of federal resources to support
4 discriminatory practices; second, it wanted to provide
5 individual citizens effective protection against those
6 practices.

7 Unfortunately, given the current levels of funding and the
8 current practices of the Department of Education, in
9 combination with the religious exemption and regulations, these
10 two primary purposes are being significantly undermined and
11 are, in fact, essentially unavailable in terms of effective
12 protection for the plaintiffs in this case.

13 The plaintiffs have put forward evidence that at
14 plaintiffs' colleges and universities alone, a handful of
15 institutions, about 28 institutions -- at those 28 institutions
16 alone there's \$1.8 billion in a single year of federal
17 financial assistance. Taxpayer money. Plaintiffs are
18 taxpayers. Plaintiffs own taxpayer money flowing to these
19 educational institutions that, again, explicitly discriminate
20 on the basis of sexual orientation and gender identity.

21 And what about having an effective mechanism for remedying
22 individual acts of sex discrimination? Well, the deck is
23 completely stacked against the plaintiffs. The evidence will
24 show that there are more than 100,000 LGBT students who attend
25 the more than 200 religious colleges and universities in this

1 country that explicitly discriminate.

2 Now, not all 100,000 of those LGBT students are
3 experiencing expulsion or harassment or other forms of
4 discrimination, but all the plaintiffs are, and they are
5 definitely not alone. And the research will show that a
6 significant number of that 100,000 experience significant
7 harms. And it's not just this year; it's not just last year.
8 It's been going on for decades. Given the number of students
9 and the amount of suffering, you would think that the
10 Department of Education's Office of Civil Rights may have been
11 able to help at least some of these students, but that's not
12 the case.

13 The number of LGBTQ students who have been helped by the
14 Office of Civil Rights, who are like plaintiffs, LGBTQ, and,
15 like plaintiffs, attending these types of institutions, the
16 number of students helped is zero. They haven't helped a
17 single one of these young people.

18 In stark contrast, the success rate for granting an
19 assurance of exemption to the individual educational
20 institutions, which is essentially their license to
21 discriminate, that success rate is a hundred percent.

22 And so what plaintiffs want to demonstrate to the Court is
23 that this system is really stacked against the plaintiffs and
24 that an assurance of exemption equals an assurance of
25 discrimination against young people like the plaintiffs.

1 The Court is going to hear today from five plaintiffs,
2 including Alex Duron, who is a nurse who was -- recently had
3 his admission to a graduate nursing program rescinded because
4 of his sexual orientation, in the middle of a pandemic.

5 You'll also hear from Veronica Bonifacio Penales, a
6 student at Baylor who is subject to significant harrassment and
7 whose application for an LGBTQ student club and support group
8 has been repeatedly denied by Baylor.

9 The Court will also hear from Audrey Wojnarowisch, a
10 student at George Fox University, and what it's like to be a
11 queer person who experiences sexual assault at one of these
12 campuses.

13 The Court will also hear from Elizabeth Hunter and what
14 it's like to be dragged into the dean's office and grilled
15 about your sexuality for three hours and then summarily
16 stripped of all your privileges on campus.

17 And, finally, the Court is going to hear from Kalie
18 Hargrove, a transgender student and a veteran who paid for
19 their education using the Montgomery GI Bill and only a few
20 months ago was expelled from Lincoln Christian University
21 because of their gender identity.

22 These students are examples of the widespread and systemic
23 discrimination occurring at these institutions. That is
24 precisely why they're coming to this Court for help. They're
25 coming to this Court for help not only through the litigation,

1 but in this preliminary proceeding, because the harms are
2 ongoing and the dangers of retaliation and ongoing harassment
3 are real.

4 So what do defendants say and why are they wrong? The
5 defendants will say that these are the wrong plaintiffs. Not
6 so. These are the precise plaintiffs who are being harmed.
7 These are not plaintiffs who are roaming the country in search
8 of a wrong. They are members of the LGBTQ community, and they
9 are attending or recently attended these institutions that the
10 government is funding and authorizing to discriminate against
11 them.

12 Defendants will also say this is the wrong time. Give us
13 more time. We're going through a process. We don't know that
14 the suffering is going to really happen or that the religious
15 exemption is going to be used. Again, not so. Suffering has
16 been going on for decades. It's well-documented in the
17 academic literature, in the press; and, moreover, the evidence
18 will show, through Dr. Wolff, that the Government defendants
19 have known of these harms for years, and they have done
20 nothing. In fact, the only thing they have done is gone
21 backwards by instigating the 2020 rules that have worsened the
22 impact of the religious exemption.

23 The defendants will also argue that religious beliefs
24 permit government funding and facilitation of invidious
25 discrimination in education. However, very similar defendants

1 have made these same arguments before regarding invidious
2 discrimination against black students at religious colleges and
3 schools, and the Supreme Court has repeatedly rejected that
4 argument, and the Court should reject it again today.

5 Plaintiffs rely heavily on a case called *Norwood v.*
6 *Harrison*, in which the Court says racial discrimination in
7 state-operated schools is barred by the Constitution.

8 So here, too, the Federal Government could not operate a
9 straights-only or a cisgender-only public school. That would
10 definitely be barred by the Constitution. However, it is also
11 axiomatic that a state may not induce, encourage, or promote
12 private persons to accomplish what it is constitutionally
13 forbidden to accomplish. And, therefore, the *Norwood* court
14 struck down funding for educational institutions practicing
15 invidious racial discrimination.

16 Why the plaintiffs and why this PI hearing?

17 The plaintiffs are here with this Court, with these
18 defendants, because they cannot obtain relief against
19 Government defendants in private lawsuits against their
20 educational institutions. They are here now because stigma and
21 violations of constitutional rights are ongoing for all
22 plaintiffs, and there are a number of current student
23 plaintiffs who are at schools right now, and they will be
24 denied access to an administrative process that Title IX was
25 supposed to guarantee them.

1 If the Court is to agree that there is either a
2 constitutional violation or Administrative Procedure Act
3 violation, there are a menu of options for remedies. The Court
4 can either address funding and order the government to withhold
5 funding or to verify that the schools are complying before
6 authorizing additional funding. That is what happened very
7 frequently in the context of race discrimination.

8 However, the Court can also mandate compliance if it finds
9 a constitutional violation and enjoin OCR and essentially force
10 OCR to maintain compliance with Title IX for these educational
11 institutions. It can also require compliance based on an APA
12 violation. Again, enjoining the federal defendants that they
13 must apply Title IX as they do to other educational
14 institutions.

15 And, finally, the most narrow form of relief is regarding
16 plaintiffs' administrative complaints, and the government can
17 enjoin the defendants from using the 2020 regulations to
18 dismiss plaintiffs' pending Title IX complaints.

19 As for plaintiffs' administrative complaints, if the Court
20 decides to go this way, at least some of the complaints are
21 timely and will be subject to dismissal based on the religious
22 exemption. At least some of the timely complaints are but for
23 the 2020 rules within the jurisdiction of Government
24 defendants. They would investigate those claims but for those
25 rules.

1 Finally, the Government defendants cannot delay and
2 delect -- and deflect forever. LGBTQ students are not going to
3 disappear overnight from these schools. In fact, their
4 presence is growing, and Government defendants are receiving
5 complaints outside of the plaintiff group.

6 And I know I'm a little over time. I can wrap it up here
7 in about one minute.

8 THE COURT: Go ahead.

9 MR. SOUTHWICK: Your Honor, what would be the impact
10 of an administrative complaint remedy? If the court enjoins
11 use of the 2020 regulations to dismiss plaintiffs' pending
12 Title IX complaints, at least some plaintiffs will be given
13 access to an effective administrative remedy that they will
14 otherwise be denied. The structural stigma from the government
15 will be lessened. Mental health outcomes will improve, and
16 you'll hear that from our experts. The risk of retaliation and
17 harassment will be reduced.

18 And, finally, no funding will be taken from any colleges
19 or universities. This concern of the Council and other
20 intervenors is misplaced.

21 So, finally, the courts, in recent times, have said our
22 society has come to the recognition that gay persons and gay
23 couples cannot be treated as social outcasts or as inferior in
24 dignity and worth. For that reason, the laws and the
25 Constitution can and, in some instances, must protect them in

1 the exercise of their civil rights, and that is precisely what
2 the plaintiffs ask of the Court today in this preliminary
3 injunction hearing.

4 Thank you, Your Honor.

5 THE COURT: Thank you.

6 Mr. Elliott Davis?

7 OPENING STATEMENT FOR FEDERAL DEFENDANTS

8 MR. DAVIS: Good morning. May in please the Court,
9 my name is Elliott Davis and -- along with my colleges,
10 Carol Federighi and Hilarie Snyder --

11 THE COURT: How did you suddenly become muffled and
12 soft-spoken again?

13 MR. DAVIS: My apologies, Your Honor. Is this
14 better?

15 THE COURT: Speak a few words. Let me hear you.

16 MR. DAVIS: Can you hear me now?

17 THE COURT: That's better.

18 MR. DAVIS: My apologies, Your Honor.

19 Good morning. May it please the Court. My name is
20 Elliott Davis and, along with my colleagues, Carol Federighi
21 and Hilarie Snyder, I represent the federal defendants, the
22 United States Department of Education and Catherine Lhamon in
23 her official capacity as the Department of Education Assistant
24 Secretary for Civil Rights. The Department of Education's
25 Office for Civil Rights, or OCR, is responsible for and fully

1 committed to enforcing Title IX's protections to ensure equal
2 access to education for all students regardless of sex. This
3 includes making certain that students who have experienced
4 discrimination based on sexual orientation and gender identity
5 have their civil rights fully met. Defendants are fully
6 committed to robust enforcement of Title IX's protections.

7 OCR carefully considers every Title IX complaint it
8 receives. Plaintiffs' complaints are no different in that
9 regard. You will hear that, with just one exception, OCR is
10 currently evaluating all of plaintiffs' Title IX complaints.

11 But in enacting Title IX in 1972, Congress included
12 various exemptions; and, as relevant here, Congress provided
13 that Title IX shall not apply to an educational institution
14 which is controlled by a religious organization if the
15 application of Title IX would not be consistent with the
16 religious tenets of such organization.

17 OCR does not have the power to ignore or defy this
18 decades-old legislative decision; and, to the contrary, the
19 Constitution commands the Executive Branch to take care that
20 the laws be faithfully executed.

21 Plaintiffs moved nearly three months ago for preliminary
22 injunctive relief, arguing that their Title IX complaints were
23 in danger of being dismissed, based on the religious exemption,
24 in a matter of days. That prediction obviously did not come to
25 pass. In their initial TRO PI motion, plaintiffs asked the

1 Court for prohibitory and mandatory injunctive relief relating
2 to their particular Title IX complaints. And in their later
3 motion to amend that briefing, they asked the Court to enter
4 even broader mandatory relief. That is to order defendants to
5 investigate plaintiffs' colleges and universities.

6 After briefing concluded, the Court declined to grant
7 plaintiffs a temporary restraining order on August 30th. The
8 Court concluded that plaintiffs had not carried their burden on
9 even a single TRO PI factor necessary to establish their
10 entitlement to prohibitory injunctive relief, let alone the
11 even higher standard for the mandatory relief that they had
12 sought.

13 The Court concluded that, one, plaintiffs had not shown a
14 likelihood of success on the merits on any of their claims;
15 two, plaintiffs had not shown a likelihood of imminent
16 irreparable harm; and, three, plaintiffs had not shown the
17 balance of the equities or public interest favored the
18 injunction.

19 Nothing you will hear over the next two days will alter
20 the Court's earlier correct conclusions. As a threshold
21 matter, plaintiffs cannot, as a matter of law, establish
22 irreparable harm. That is because, as we explained in our
23 opposition brief at page 10, based on cases from the Ninth
24 Circuit and the DC Circuit, harm is not irreparable when
25 plaintiffs have an adequate alternate remedy; a point that

1 plaintiffs did not dispute in their reply.

2 And as the Court recognized on page 11 of its August 30th
3 opinion, based on these cases, plaintiffs may file Title IX
4 lawsuits directly against their respective schools, challenging
5 the constitutionality of the religious exemption and its
6 implementing regulations, and may seek appropriate preliminary
7 injunctive relief in those actions. That is, I believe, a
8 direct quote from Your Honor's opinion. Nor will any of
9 plaintiffs' evidence demonstrate that plaintiffs' claims are
10 ripe, that plaintiffs have standing, or that plaintiffs' claims
11 are likely to succeed for the reasons that we've explained in
12 our motion to dismiss and in our opposition to plaintiffs' TRO
13 PI motion.

14 In all events, plaintiffs' evidence will add little to the
15 voluminous record that existed when the Court denied
16 plaintiffs' bid for a temporary retraining order over two
17 months ago.

18 At that point, plaintiffs have filed dozens of
19 declarations that included plaintiffs' Title IX complaints,
20 their supporting declarations; Title IX related correspondence
21 between the Department of Education and certain of plaintiffs'
22 educational institutions; and about a half dozen social science
23 surveys and journal publications standing for the proposition
24 that LGBTQ+ students suffer negative mental health consequences
25 when they are discriminated against.

1 And these publications included, at Docket Nos. 49-6,
2 49-10, and 49-16, journal publications of their testifying
3 expert witnesses, Drs. Joshua Wolff and Ilan Meyer.

4 So what evidence will plaintiffs present?

5 Four of the plaintiffs will testify about their claims of
6 discrimination that they leveled in their Title IX complaints
7 and iterations. All of that has been in the record for months
8 now. Their declarations were all filed with plaintiffs'
9 original complaint back in March, at Docket No. 1, and their
10 Title IX complaints were filed along with plaintiffs' TRO PI
11 motion at Docket No. 48.

12 You will hear plaintiffs' expert witnesses testify about
13 how discrimination that LGBTQ+ students suffer at educational
14 institutions can lead to serious negative mental and physical
15 outcomes. Defendants certainly do not dispute that general
16 principle, nor do we do so in our briefing; but those opinions
17 are also already before the Court in the various social science
18 publications that plaintiffs refer to in their PI motion and
19 filed at Docket No 49. And, in fact, the Court described those
20 opinions as, quote, well-documented, on page 10 of its opinion.

21 One of plaintiffs' testifying experts, Dr. Wolff, will
22 presumably testify about two meetings that he had with various
23 members of the Department of Education. To the extent that
24 plaintiffs argue, by virtue of these two meetings, defendants
25 were somehow obligated to launch investigations into dozens of

1 religious schools, defendants will simply note that plaintiffs
2 have not asked for any such relief in their active complaints.
3 Such relief would not preserve that status quo. Plaintiffs do
4 not satisfy the extremely high standard to obtain mandatory
5 relief like this, particularly at the PI stage. And as the
6 Supreme Court has recognized, agency enforcement decisions are
7 generally committed to the agency's absolute discretion.

8 Finally, a nonplaintiff, Kalie Hargrove, will testify
9 about her expulsion from Lincoln Christian University, a
10 college attended by none of the actual plaintiffs in this
11 litigation, and that testimony will not be related to relief
12 sought by plaintiffs in their briefing, all of which related to
13 plaintiffs' Title IX complaints and plaintiffs' schools.

14 In short, plaintiffs' forthcoming evidence does not
15 meaningfully add to the record that was before the Court when
16 it denied plaintiffs' motion for a temporary restraining order,
17 and it thus should not move the needle set by the Court set in
18 the Court's earlier August 30th opinion.

19 Indeed, plaintiffs' evidence will not show that they are
20 likely to suffer imminent or irreparable harm in the absence of
21 an injunction. If plaintiffs are concerned that OCR will
22 eventually deny their Title IX complaints, they may file
23 private Title IX lawsuits at any time in an effort to obtain
24 judicial redress for any injuries that they are suffering, nor
25 will plaintiffs' evidence demonstrate that they are likely to

1 succeed on the merits of any of their claims.

2 As defendants have explained in their briefing, plaintiffs
3 lack standing and their claims are not ripe.

4 The constitutionality of Title IX's religious exemption is
5 a prototypical legal question. Plaintiffs' RFRA claims fail to
6 follow along with their Establishment Clause claim. And
7 extrinsic evidence is irrelevant to plaintiffs' APA claims
8 because APA claims are reviewed on the administrative record.

9 Finally, plaintiffs' evidence will not show that the
10 balance of the equities and public interest favor them.

11 The Court's August 30th opinion, on page 10, reflects the
12 Court was well aware of the, quote, "well-documented harms that
13 anti-LGBTQ discrimination has on the LGBTQ+ community."

14 Nevertheless, the Court concluded, on page 11, that the
15 balance of equities and the public -- public interest did not
16 favor plaintiffs for four reasons. First, plaintiffs had not
17 shown that their Title IX complaints would be dismissed
18 imminently based on the religious exemption; two, plaintiffs
19 had not shown that the defendants had violated their
20 constitutional rights; three, plaintiffs had not shown that the
21 requested relief would result in immediate relief from the
22 physical and mental harms they had alleged; and, four,
23 plaintiffs can file private Title IX lawsuits against the
24 respective institutions and may seek preliminary relief in
25 those direct actions.

1 Defendants' evidence, on the other hand, will reinforce
2 the Court's conclusions in its August 30th opinion and rebut
3 plaintiffs' earlier baseless allegations that the career civil
4 servants charged with enforcing Civil Rights law at the
5 Department's Office for Civil Rights were, for some reason,
6 scheming to undermine plaintiffs' Title IX complaints.

7 In stark contrast, Randolph Wills, OCR's Deputy Assistant
8 Secretary for Enforcement, will explain that given the sudden
9 influx of Title IX complaints against seemingly religious
10 institutions filed across a number of OCR's regional offices,
11 the Department determined to ensure that the various regional
12 offices were treating these complaints consistent.

13 And while OCR has never simply dismissed Title IX
14 complaints based on the religious exemption in a knee-jerk
15 fashion, you will learn that in order to ensure consistency of
16 approach and outcomes, decisions related to these Title IX
17 complaints, such as whether to dismiss them in the evaluation
18 stage for any reason or to open them for investigation, will
19 ultimately be made by the Department's Assistant Secretary for
20 Civil Rights.

21 Mr. Wills will explain that one of plaintiffs' Title IX
22 complaints has been dismissed, not based on the religious
23 exemption, but because that plaintiff sued her educational
24 institution based on the same operative facts.

25 Mr. Wills will testify that plaintiffs' remaining Title IX

1 claims remain under evaluation in OCR's regional offices and
2 that there is no mandatory deadline for their resolution.

3 Although OCR's goal is to resolve 80 percent of its
4 Title IX complaints within 180 days of receipt, OCR has many
5 thousands of complaints. OCR takes the time it needs to
6 carefully evaluate the Title IX -- to carefully evaluate the
7 allegations in the Title IX complaints it receives, and it will
8 do so here.

9 And, of course, the ultimate decision on plaintiffs'
10 Title IX complaints will be made by the assistant secretary.

11 Nor is dismissal based on the religious exemption a
12 foregone conclusion, as plaintiffs have argued.

13 As the Court observed on page 9 of its August 30th
14 opinion, Title IX complaints can be dismissed on a variety of
15 grounds that do not involve the religious exemption. Title IX
16 complaints may also be open for investigation rather than being
17 dismissed. OCR does not simply assume that religiously
18 controlled institutions will assert a religious exemption to
19 all Title IX complaints. The institution must request an
20 assurance of one. And even to the extent that a religiously
21 controlled institution has an assurance of religious exemption
22 letter on file, you will see that religious exemption
23 assurances are particularized in nature and do not immunize
24 educational institutions en masse.

25 Alice Yao, the supervising attorney for the Title IX team

1 at OCR's Program Legal Group, will tell you that the Department
2 is not aware of any institution ever even seeking an assurance
3 of religious exemption from Title IX's harassment regulations,
4 which also covers sexual assault.

5 And as the Department explained in the November 2020 final
6 rule, at 85 FR 59948, quote, "The Department is skeptical that
7 schools will be eligible to assert exemptions from the
8 requirement to respond appropriately to sexual harassment
9 under Title IX or from the prohibition on retaliation against
10 individuals who invoke their rights under Title IX."

11 Simply put, defendant's evidence will further demonstrate
12 that plaintiffs are not entitled to preliminary injunctive
13 relief. At the conclusion of this evidentiary hearing,
14 defendants will again ask this Court to deny plaintiffs'
15 preliminary injunction motion.

16 Thank you.

17 THE COURT: For the intervenors?

18
19 OPENING STATEMENT FOR RELIGIOUS SCHOOL INTERVENORS.

20 MR. LIPPELMANN: Thank you, Your Honor. And may it
21 please the Court, my name is Mark Lippelmann, counsel for the
22 religious school intervenors: Phoenix Seminary, Corban
23 University, and William Jessup University.

24 We have now heard from the perspective of the plaintiffs
25 and from the government, but I would submit that the key to

1 simplifying and resolving this motion is actually to analyze
2 the rights of religious schools.

3 As this Court already rightly recognized in granting
4 intervention, it's the schools' rights that the exemption was
5 created to protect. With the schools' rights in mind, it
6 becomes clear that plaintiffs' motion for preliminary
7 injunction should be denied for several reasons.

8 First, plaintiffs' request for preliminary injunction was
9 doomed from the start because the Court already denied a
10 temporary restraining order subject to the very same *Winter*
11 factors, and the law has not changed since.

12 And, importantly, the Court recognized that both the
13 plaintiffs' initial and amended motions for -- motions seek
14 mandatory forms of relief. And that has two important
15 implications for the motion before the Court today.

16 First, it forecloses plaintiffs' attempt to invoke the
17 Ninth Circuit's more relaxed serious questions test, and it
18 elevates plaintiffs' already heightened standard requiring that
19 they go beyond a likelihood of success on the merits to show
20 that the law and facts clearly favor their position.

21 Given the mandatory nature of plaintiffs' requests, the
22 Court's TRO decision and the unchanged state of the law in the
23 last intervening months, there is no factual testimony that
24 plaintiffs could offer today that could justify changing the
25 result under the *Winter* factors.

1 And one last point on the *Winter* analysis that I would
2 like to make is the initial motion for TRO and PI. In that
3 motion, plaintiffs at least attempted an explanation of the
4 *Winter* factors with respect to injunctive relief relating to
5 the administrative complaints, but plaintiffs' amended motion
6 sought to add relief with no independent attempt to ground that
7 unique relief in the *Winter* factors.

8 So, second, the religious schools' rights affirmatively
9 require the religious exemption, and this is important because
10 it makes it impossible for plaintiffs to establish that the law
11 clearly favors their causes of action to eliminate it.

12 Start with the school's free exercise rights. Just this
13 summer a unanimous Supreme Court held a nondiscrimination law,
14 like Title IX, would violate the Free Exercise Clause if it
15 allows any secular exceptions but burdens religious exercise by
16 putting religious institutions to a choice of either violating
17 their religious convictions or curtailing their mission.

18 And here, if Title IX were stripped of its religious
19 exemption, enforcement of Title IX would be clearly
20 unconstitutional because the statute allows eight secular
21 exceptions, but it would put religious schools to the choice of
22 violating their convictions or curtailing their mission.

23 Even worse, it could cause them to cease to exist
24 altogether because many schools can't sustain losing the low
25 and middle income students who need financial assistance.

1 So schools' free exercise rights foreclose any suggestion
2 that the law clearly favors plaintiffs' position.

3 The schools' RFRA rights are even more straightforward.
4 Under RFRA, the government can't substantially burden religious
5 exercise unless that burden is the least-restrictive means of
6 advancing a compelling governmental interest. But without the
7 religious exemption, Title IX would impose a substantial burden
8 by putting schools to that impossible choice, and the Supreme
9 Court recently and repeatedly held that a law that allows any
10 secular exceptions is not the least restrictive means of
11 advancing a governmental interest. So the schools' RFRA
12 rights, likewise, foreclosed any suggestion that the law
13 clearly favors plaintiffs' position.

14 And third, and finally, I have one note on the APA claim.
15 In plaintiffs' opening statement, Mr. Southwick described two
16 types of plaintiffs' causes of action, two classes of causes of
17 action: The non-APA causes of action related to the
18 constitutionality of the religious exemption and the APA cause
19 of action.

20 I just want to point out for the Court that the APA claim
21 on its own is insufficient to support the relief that
22 plaintiffs are requesting in the complaint. Because even if
23 the 2020 rule changes were stricken, which they should not be,
24 the religious exemption would still exist and appear in the
25 statute itself. It would still exist and appear in the prior

1 version of the regulation, and it would do nothing to change
2 the Department's decades-long longstanding policies and
3 interpretive memos.

4 With that, I would like to defer the remainder of the
5 intervenors' time to my colleagues, counsel for the CCCU.

6
7 OPENING STATEMENT FOR CCCU INTERVENORS

8 MR. SCHAERR: Thank you.

9 And good morning, Your Honor. My name is Gene Schaerr,
10 representing Intervenor Council for Christian Colleges and
11 Universities, which has been working hard for many years to
12 help its member institutions provide a loving and supporting
13 environment for members of the LGBT community who wish to
14 attend those institutions. And as Mr. Southwick said, there
15 are many of them.

16 Let me add just three brief points to the excellent
17 presentations by the Department and the individual religious
18 college and intervenors, and they detailed a number of reasons
19 why the plaintiffs here have no real prospect of succeeding on
20 the merits and cannot show that the equities or the public
21 interest favors a preliminary injunction. In other words, I
22 think they have well explained why the Court was correct in
23 denying the requested TRO and why it should also deny the
24 requested preliminary injunction.

25 My first point, as will become apparent as the hearing

1 proceeds, is that even if the Court were to ignore the fatal
2 jurisdictional problems with plaintiffs' case and reached the
3 merits, the Court would inevitably find itself at the center of
4 a theological thicket, with the religious colleges, on the one
5 hand, forced to defend their theological views about marriage
6 and human sexuality and the plaintiffs' and their experts, on
7 the other hand, openly or suddenly criticizing those beliefs
8 and trying to convince the Court that they constitute, as
9 Mr. Southwick would put it, invidious discrimination, and that
10 is that they're the moral equivalent of racism. But that, of
11 course, is a powerful reason that the plaintiffs cannot prevail
12 on the merits. Because the Establishment Clause prohibits the
13 Court from engaging in or even refereeing what is necessarily a
14 debate about theology.

15 Second, in any event, the effort by plaintiffs' counsel
16 and their experts to paint Christian College's theology-based
17 views about sexuality as bigoted and invidious is foreclosed by
18 at least three recent Supreme Court decisions, including the
19 one that was just mentioned. Those decisions were all joined
20 by some of the most progressive members of the Supreme Court,
21 including, in all three cases, Justice Breyer and
22 Justice Kagan, and they all make clear that traditional
23 Judeo-Christian views about sexuality and gender identity are
24 not at all to be considered invidious discrimination or -- or
25 equated to racism.

1 And, third, contrary to the other side's claims, we will
2 show that Christian colleges play an important role in the
3 diversity of American higher education, a role that actually
4 benefits, rather than harms, important portions of the LGBT
5 community.

6 As we will see from the evidence, a significant subset of
7 young people who identify as LGBT are also devout Christians
8 and wish to follow traditional Christian teachings about
9 sexuality and gender, and for that subset of the LGBT
10 population -- obviously it's not all -- it's not the entire
11 population, but it is a subset of the population -- for that
12 group Christian colleges perform an important and sometimes
13 even vital service. And, indeed, those benefits are reflected
14 in Mr. Southwick's admission a few moments ago that LGBT
15 students are choosing to attend Christian colleges in
16 increasing numbers.

17 And you might ask why is that? Well, those colleges
18 generally provide a supporting and loving atmosphere in which
19 young Christians who identify as LGBT can mature in a setting
20 that encourages them and supports them in living the way that
21 they wish to live rather than being constantly bombarded with
22 temptations to violate their Christian beliefs. And we'll see
23 proof of those benefits, not just in the evidence that we will
24 provide, but in a study conducted by one of the plaintiffs' own
25 experts.

1 So for at least this subset of the LGBT community,
2 depriving Christian colleges of their Title IX immunity and,
3 thus, for many of them, of their -- well, for all of them, of
4 their ability to offer federal education aid to any of their
5 students, including their LGBT students, would be a real
6 tragedy. And that's another important reason why the public
7 interest strongly disfavors, rather than favors, the injunction
8 that the plaintiffs seek here.

9 Thank you, Your Honor.

10 THE COURT: Call your first.

11 MR. SOUTHWICK: Your Honor, this is Paul Southwick.
12 Our first witness is Alex Duron. He was on earlier, so let's
13 see -- all right.

14 THE COURT: I don't see him.

15 MR. SOUTHWICK: I can see him on my screen and --

16 THE COURT: Is he wearing a dark hoodie?

17 MR. SOUTHWICK: Could you turn the light on, Alex,
18 maybe? A little bit more light or open the window.

19 MR. DURON: This is Alex Duron. Can you all see me?

20 THE COURT: That's much better. Thank you.

21 MR. SOUTHWICK: Are we having anyone swear in the
22 witness?

23 THE COURT: Raise your right hand.

24 ///

25 ///

Duron - D

1 ALEX DURON,
2 called as a witness in behalf of the Plaintiffs, being first
3 duly sworn, is examined and testified as follows:
4

5 THE WITNESS: Yes, Your Honor.

6 THE COURT: Please state your full name and spell
7 your last for the court reporter.

8 THE WITNESS: My full name is Alex Duron. It's
9 spelled A-l-e-x. Last name is D-u-r-o-n.
10

11 DIRECT EXAMINATION

12 BY MR. SOUTHWICK:

13 Q. Thank you, Alex. Thank you for being here today.

14 Could you tell us a little bit about yourself? Where you
15 currently live, where you grew up, those sorts of things.

16 A. Currently, I'm living in Fresno, California. I actually
17 grew up in west Texas, a small town called El Paso, Texas, and
18 I'm currently in anesthesia school, and I'm an RN in ICU.

19 Q. And could you tell us a little bit about your professional
20 career? How long have you been in nursing, and how did you
21 start in that field?

22 A. So I originally started as a surgical tech in the
23 operating room. I started noticing that there was a lot of
24 nurses around me, and so I decided to go to nursing school.

25 In 2013 I actually graduated, and so since then I have

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1 been an intensive care nurse, a registered nurse.

2 And, currently, I wanted to proceed further with my
3 education, and so I decided to attend a graduate school for
4 anesthesia.

5 Q. Could you tell us a little bit about that application
6 process, how you decided which schools to apply to and those
7 kind of things?

8 A. So, initially, whenever you need to apply to a school,
9 like anesthesia, it's probably like a two-year process where
10 you need to -- for me retake classes. Higher level, more
11 science classes. You need at least four to five letters of
12 recommendation. You need a minimum of two years of ICU, but I
13 had around seven -- or, actually, six when I applied.

14 The schools that I was kind of searching for were
15 primarily under 35 students. High attrition rates would just
16 mean that they were able to get students all the way through
17 the three-year program, because it's very vigorous, and also
18 that they had at least a 95 percent pass rate for the
19 first-time test-takers when we get our license.

20 Q. And what were the schools that you ultimately chose to
21 apply to and focus your efforts on?

22 A. I tried to apply to -- well, I applied to Baylor, in
23 Houston; I applied to Texas Western University in Forth Worth;
24 Texas Christian University in Forth Worth also; and also Union
25 University was another one that I applied to.

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1 Q. And at some point did you receive an admissions decision
2 from Union University?

3 A. Yes. I actually did get from admissions that I was
4 granted admission to their school.

5 Q. And can you, just for terms of a time frame, tell us what
6 year this was? Is this 2020?

7 A. Yes, it was 2020.

8 Q. And tell us a little bit about that admissions process for
9 Union University. Did you have to meet with any faculty, or
10 what all did you have to do to get that admission?

11 A. So of course I had to fill out -- like I said, they sent
12 out an application, which, you know, took me probably two to
13 three months to fill out. Sent all my transcripts to the
14 school. Once I did receive an interview, I ended up going
15 to -- I had to fly to Tennessee, obviously, because it was an
16 in-person -- this was pre-COVID.

17 So I flew to Tennessee, and I had to meet with the
18 administrator and three of the faculty members there. They are
19 pretty much the ones that teach the classes. It's probably,
20 like, maybe an hour interview. They just want to know you in
21 full detail; what kind of person you are. If, you know, you're
22 a good person, pretty much, is what they wanted to find out.
23 And also, you know, rationale of "Why do you want to do this?
24 What's your goals?"

25 Q. Did they tell you whether or not you had to be a Christian

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1 or a particular type of Christian in order to enroll in their
2 graduate nursing program?

3 A. No. They pretty much told me that one of my classes in
4 the first semester was going to be a faith-based class. You
5 know, she said, "You don't have to be a Christian." Melissa,
6 the director, actually is the one that told me this. She said,
7 "You don't have to be a Christian. We're not pushing our faith
8 on you. We just want to show you what -- what we believe in.
9 We give you a class to educate you on it." It's more or less
10 to understand what the -- the college believes in. So that was
11 going to be one of the courses.

12 Q. And then at some point after your admission, but before
13 you were meant to start the program, COVID hit at some point;
14 is that right?

15 A. Yes, sir.

16 Q. And then after COVID hit you were getting closer to
17 starting classes, and were you meant to start classes in -- was
18 that July of 2020?

19 A. Yes. It was supposed to be July 27th to the 29th
20 orientation in 2020.

21 Q. So did you take any steps during the summer of 2020 to
22 prepare for this life transition?

23 A. I did, actually. I knew that I wasn't going to have
24 medical insurance for a short period of time, and so I needed
25 to save money, as much as I could. So, also, I decided that

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1 I would -- I had a car that I really didn't need. It was more
2 of a -- I would call it a nice car. I decided to sell that car
3 because I just needed to become a lot more frugal compared to
4 the way, I guess, I had been living for the past eight years.

5 And also I had to let my work know, for future reference,
6 you know, that I was going to put in my notice way before two
7 weeks, just -- I gave them, like, an end date. The school
8 advised me to take at least a month break because it was going
9 to be a very long three years for me.

10 And, of course, I prepared my fiancé, to let him know that
11 I'm going to have to be a little bit, you know, distance at
12 first because I need to make sure that I put my studies first
13 and understand how vigorous this program was. Because someone
14 can tell you how vigorous it is, but it's always dependent on
15 the person. So I kind of emotionally prepared my family for
16 it.

17 Q. And so is your plan that your fiancé would stay at your
18 home in Texas and you would essentially move away for a period
19 of time to start your studies at Union University?

20 A. Yes. That was the plan. Because we had just purchased a
21 home, and we couldn't sell it, obviously, because we would be
22 in debt with it. And also we have a lot of animals. So
23 there's no way he could have moved over there either way, and
24 there's -- I was going to be of no help for sure -- I knew
25 that -- for the first couple of years.

Duron - D

1 Q. How did it feel when you first got that admissions
2 decision?

3 A. Well, when she called me, I was at work, and she just let
4 me know that I was one of their top choices, which, obviously,
5 I was grateful for. I was very excited. And so I pretty much
6 let everybody know within, like, 30 minutes what happened,
7 including family, because it was a step that I had been waiting
8 for, like I said, for a couple of years. This is a building
9 process. So I was really excited. So I kind of started
10 rolling the gears into action to see -- just to make this as
11 easy of a transition for myself as I could because I never
12 lived anywhere else but Texas.

13 Q. So it sounds like you were, you know, gearing up to start
14 this new stage of your career; excited, telling family and
15 friends. And then at some point did -- did somewhere along the
16 line a turn was taken for the worst in the situation?

17 A. Yes. So I ended up getting a letter from -- at the time I
18 didn't know who it was. It was the provost of the school.

19 This happened on July the 18, 2020. He sent me an email
20 on a Saturday to let me know that I was not -- my application
21 was rescinded due to my social media and also to my emergency
22 contact, being my fiancé, and also a housing situation that was
23 not appropriate for the terms of the school.

24 Q. So was it your understanding that essentially your
25 admission was being rescinded shortly before you were meant to

Duron - D

1 start this program?

2 A. Yes. It was a -- whenever I did get it, I -- I honestly,
3 at that time, didn't understand exactly what had happened,
4 again, because I didn't know who this person was. So a lot of
5 times -- I thought Melissa was the one in power, which is the
6 director, the one that initially pulled me to the school. So I
7 was --

8 Yeah, that one. So that's the document exactly that I
9 received per email.

10 So, actually, the day that it did happen, I can remember
11 like it was yesterday. So I was actually leaving the gym. I
12 got an email from Union, and I saw it. Obviously I opened it
13 right away because I was super excited to see, you know, what
14 the next step was. And I kind of saw "rescinded," and I didn't
15 really -- I don't really hear that word very much, and so I
16 decided to pull over. I started to read it, and then -- then I
17 realized that I was in complete shock because I understood what
18 it said when it said "social media" and "your intent to live
19 with a partner."

20 So I immediately just -- I couldn't drive for a little
21 bit. So I stopped and waited. Then I drove home, and then I
22 told my fiancé to read it, like read it over and over, to
23 explain to me if I'm understanding what this letter says.

24 So, obviously, when I started reading this letter, I
25 realized that I was kicked out of the university pretty much

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1 for my sexual orientation, and that's -- I needed more
2 information, and so I wanted to talk to the provost at that
3 time to see exactly what happened.

4 Q. So how did that feel for you, getting hit with that kind
5 of news?

6 A. So, initially, just from seeing it, I pretty much felt
7 like a complete failure. I'll be honest with you. So when I
8 saw it, for some reason, I just didn't know how to -- how to
9 gauge what had just happened. So I just looked at my fiancé,
10 and I just told him that I failed. I felt like everything that
11 I worked for, including just being a nurse, in general, because
12 that's part of the prerequisites, I just feel like -- I feel
13 like it was just ripped away from me. Just at that moment all
14 my education, everything I worked for, all the letters of
15 recommendation, all that money I spent, the travel, I felt like
16 a complete failure. So I told my fiancé -- I said, "You know
17 what? I'm sorry. I failed." He didn't understand why I was
18 saying that.

19 At the time I just felt that -- because I always tell
20 people "No matter what happens, you can always have your
21 education to back you up. Nobody can ever take that away from
22 you." And at that moment -- that's why I was so confused --
23 because it was ripped away from me.

24 So I pretty much closed the computer, didn't want to talk
25 to anybody. I just went to my room, went to the closet. I

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1 turned off the light, and I just sat in the corner because I
2 didn't know what else to do. I was just completely isolated.
3 I'm not a person to be depressed. I just -- I got a taste of
4 it. It just is not -- it's not in my genetic code to be
5 depressed. So I didn't understand how to really do that until
6 my fiancé found me, pulled me out of the room. I had to
7 explain to him how I felt.

8 He looked me in the eyes and he said, "You know, you're
9 one of those people that hasn't gone through this. You have
10 never been discriminated against for being gay, and this is
11 your first time," and then it dawned on me when he said that.
12 I literally stared at him and said, "Wow. This is what this
13 feels like."

14 He says, "Yes, I have had it numerous times. This is --
15 this is what it is, but you got a hundredfold at just one time.
16 That's why you're so confused about it."

17 So that's kind of where I ended up.

18 MR. SOUTHWICK: Thanks for sharing that, Alex.

19 So I just want to do one thing that's a little more
20 technical, but since we have to introduce exhibits to get them
21 admitted, I would like to -- I pulled up the exhibit Alex Duron
22 Expulsion Letter, which is listed in plaintiffs' exhibit list,
23 and I would like to move to have this admitted as Plaintiffs'
24 Exhibit No. 1.

25 MR. DAVIS: No objection from the federal defendants.

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1 THE COURT: It will be received.

2 MR. SOUTHWICK: All right. So just to confirm,
3 Exhibit 1 is admitted.

4 BY MR. SOUTHWICK: (Continuing):

5 Q. Alex, after you had that conversation with your -- with
6 your fiancé that night, at the some point did you try to figure
7 out "All right. Is there any way that I can fix this? Is
8 there anything that I can do about this?"

9 A. I did, actually. I have a couple of friends that deal a
10 lot with, you know, legalities and stuff like that. I
11 researched myself. And as soon as I started searching, I saw
12 the Title IX, and I read it a couple of times. I understood
13 exactly what it meant.

14 And so as I started digging further into research, I
15 started finding out that there's a lot of students in the LGBT
16 community that go through this.

17 But, again, I had no idea that this was actually
18 happening. So I kind of told myself I feel like I can't do
19 anything because this is a hundred percent legal that they can
20 do this to me, and there's nothing I can do about it.

21 So I kind of just sat there in awe and said that
22 there's -- there's nothing I can do.

23 Q. When you say you were looking at the Title IX aspect, did
24 you find information that Union University had received an
25 exemption to Title IX?

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1 A. Yes.

2 Q. Is that what you're referring to it?

3 A. Yeah. I actually searched, and I think at the time the
4 president of the school was actually from San Antonio, where I
5 had originally lived before Fresno, and so I saw that they had
6 filed for it. And many other schools had filed for it also.
7 So that's how I knew that Union was protected in that aspect of
8 it.

9 MR. SOUTHWICK: All right. At this point I would
10 like to introduce Exhibit No. 2 as the Union University
11 Exemption Assurance from OCR, which I have pulled up on the
12 screen, and it includes the correspondence between OCR and
13 Union University for prior religious exemption as well as the
14 more recent religious exemption covering sexual orientation.

15 Any objections?

16 THE COURT: Hearing none, it will be received.

17 BY MR. SOUTHWICK: (Continuing):

18 Q. All right. Union University Exemption Assurance from OCR
19 is Plaintiffs' Exhibit No. 2.

20 So, Alex, you just talked about finding out that Union
21 University had a religious exemption, and so there was -- you
22 felt like there was nothing you could do about it. How did you
23 kind of process that yourself or with your spouse -- or, I
24 mean, your fiancé?

25 A. So I pretty much didn't want to stay quiet about it. I

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1 wanted people to know not only for personal reasons, because I
2 didn't want to explain to every single person why I was still
3 in San Antonio and not in Tennessee for school, and also I
4 wanted people to realize that this stuff is happening still to
5 other people. So I took it upon myself, with my fiancé, and I
6 wrote on my Facebook, you know, to a bunch of -- I have a lot
7 of medical professionals that are on my Facebook or are
8 connections to. I put it on there and just explained to
9 them -- I showed them the letter of what happened to me and
10 that this wasn't going to stop me, and I was going to continue
11 to fight for what I think is the best future for me and the way
12 I can help people, getting away from that, I -- so once I did
13 that, I started to realize that there was so many people
14 contacting me that said, "This happened to me too. I'm glad
15 you're speaking out." And the medical professionals were not
16 very happy about this decision.

17 And everybody kind of turned back to what I had said and
18 said, "This cannot be legal. Is it -- is it really the truth?
19 Is this really what happened?"

20 And I'm like "It's a hundred percent legal what they're
21 doing. They can kick me out just that quickly and just for
22 being, you know, from this type of LGBTQ community."

23 Q. Now, the graduate nursing program that you were kicked out
24 of, was that an accredited program?

25 A. It actually is an accredited program. It's called the

Duron - D

1 COA, and they were the second person that I contacted because,
2 as many people know, in the nursing community, you're not
3 actually allowed to discriminate against any type of patient,
4 and the COA is an accreditation body for anesthesia for a
5 nurse, which is -- which allows Union University to function
6 with their anesthesia program. So I went that route to see if
7 they could help me.

8 Q. And at this point was -- was anyone able to help you,
9 whether it was the accreditors or the Federal Government? Did
10 you find anyone who was able to help you?

11 A. No. They pretty much told me -- even the COA turned and
12 said, "We're going to talk to Union about it, and we'll come up
13 with a decision," but they were not going to involve me.

14 They didn't really want to deal with me at that time, and
15 so I pretty much was just left out in the cold to let it pan
16 out for itself. There was many people in the medical community
17 that were not LGBTQ that wanted to fight for me; but, again, it
18 was a battle that I had to fight, but I wasn't able to because
19 nobody would -- nobody really gave me guidance of where to go.

20 Q. Did you feel any shame around getting this dismissal
21 letter and going through that whole experience?

22 A. I did, actually, because I just felt at the time that -- I
23 felt that I -- when I applied to these programs, I felt I had a
24 worth, and I said I can provide -- I can give you what you're
25 looking for as a student. I can give you good scores. I will

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1 do everything you want me to. I'll represent your school very
2 well. Any school that I have gone to, I have always gotten
3 excellent scores. I always named where I went to, and I always
4 made the school proud of what I was able to provide with their
5 education.

6 So whenever this kind of happened, I just -- I felt like
7 almost ashamed to go -- I couldn't go back to work. I'll tell
8 you that right now. I couldn't show my face at that -- the job
9 that I loved -- and I really loved that job that I left --
10 because I felt ashamed, like I failed, and I didn't want to
11 reverse back into my old career because I knew that I needed
12 more autonomy and I knew my worth and I could do better than
13 that.

14 Q. And as an American, as a taxpayer, as someone who is in a
15 helping profession, how did it feel knowing that your
16 government wasn't even going to be able to help you in this
17 situation?

18 A. At the time, when it did happen, I felt like I -- it's
19 going to sound weird. I was like what -- should I pay taxes
20 because I know what it's going to? I know legally you have to,
21 but I just felt like I'm funding my own -- I'm funding my own
22 denial, in a way. Like, I'm funding my own rescindce by doing
23 this; like just sending my money out there. Giving my money,
24 you know, with interest, to the government with loans I have
25 gotten in the past, which has always been an easy thing to do;

Duron - D

1 apply for a loan, give payments, pay it off. You know, like, I
2 love that part that we're able to do that, to get loans. But
3 at the same time, I think to myself, I could have been a
4 semester, two semesters in, owed \$30,000, and just been cut
5 off, and the Department of Education would have told me "You
6 still need to pay us. Because it doesn't matter. They're
7 protected, but you're not protected. So you still have to pay
8 us our \$30,000."

9 Q. At some point after you made a public disclosure about the
10 discrimination you experienced, did -- did you hear from any
11 other students at Union, whether they were alum or current
12 students, about whether anyone else was experiencing similar
13 things?

14 A. Yes. I would have to say that the real question is who
15 did I not hear from? I heard from people in school that
16 actually -- that went to Union, that were in Union and had
17 graduated from Union, and the best thing that I told them was
18 I -- the current friends that I have at Union, I told them to
19 take me off their Facebook. Don't communicate with me. Block
20 my calls. Don't comment on any of my stuff. Because, as I
21 read their values, if you even support it, then you can get
22 kicked out. And the last thing I wanted for them to do was to
23 get kicked out just because they -- they love me and they want
24 to support me, but I would get even more hurt if they would get
25 kicked out because of something -- just a support system that

Duron - D

1 they had.

2 The hardest thing to hear, though, was when I would hear
3 these kids that -- you know, they're growing up. They're 19,
4 18 years old, telling me how they want to kill themselves; how
5 I heard from somebody that he's on so many medications because
6 he's depressed because he suppressed his sexuality for so long.
7 It almost mentally deteriorated him to a point where he needed
8 psychiatric help, like a psychiatric hospital. And these kids
9 were coming to me and telling me, you know, "I'm afraid now,
10 like, what to do. Should I divorce my fiancé?" Because, you
11 know, they were either, you know, gay, lesbian, whatever they
12 were, and -- or they -- or even -- I even had a straight couple
13 tell me "Now I'm afraid to even live with my girlfriend because
14 we're not married."

15 So I couldn't provide any information because I didn't
16 want to steer them the wrong way. I just told them, "Read
17 this. They're super strict. If they find out any of these
18 things, they're going to kick you out. You have no protection.
19 You need to understand that."

20 MR. SOUTHWICK: At some point -- well, I would like
21 to go ahead and introduce a third exhibit at this point, which
22 is the Union University policy language. I put this up here on
23 my screen, and I would like to introduce this as Exhibit No. 3,
24 if there are no objections.

25 MR. LIPPELMANN: Mr. Southwick, this is

Duron - D

1 Mark Lippelmann. I just have a clarifying question.

2 Exhibit No. 1, I understand, is the email from Union University
3 to Mr. Duron, and it -- it references -- it says, "Attached to
4 this email is Union University's community value statement."

5 But at least the version I received, I don't believe it had any
6 attachment to this email. Can you confirm whether this
7 document you're -- that you're introducing now is that
8 attachment or not?

9 MR. SOUTHWICK: Alex, can you respond to that
10 question?

11 THE WITNESS: Yes, it is. The one I have is the
12 signature version on the second page. I don't know if you have
13 that one. It was signed on September the 10th of 2019. You
14 just have -- you have the email, but the attachment is what you
15 have. That's the attachment.

16 MR. LIPPELMANN: Okay. Great. Thank you.

17 No objection.

18 THE COURT: It will be received.

19 BY MR. SOUTHWICK: (Continuing):

20 Q. All right. Alex, so when your admission was taken away
21 from you, there were certain code of conduct regulations that
22 were referred to, and you received this policy language. And
23 there's a section here on sexual impropriety, and it states --
24 was it your understanding that these are behavioral codes
25 required by Union for even at -- for its graduate students,

Duron - D

1 including you?

2 A. Yes, sir.

3 Q. And under Sexual Impropriety, it states, "Sexual
4 impropriety includes, but is not limited to, participation in
5 or the appearance of engaging in premarital sex, extramarital
6 sex, homosexuality, homosexual activities, or cohabitation on
7 campus or off campus. Students may not live with or stay in a
8 hotel room with a non-related peer of the opposite gender, even
9 if the relationship is not sexual. The promotion, advocacy,
10 defense, or ongoing practice of a homosexual lifestyle,
11 including same-sex dating behaviors, is also contrary to our
12 community values."

13 How did it feel to be denied a graduate nursing degree
14 based off of this kind of statement about homosexuality and
15 homosexual activities?

16 A. I feel that it wasn't fair. I don't think that -- as a
17 provider, I don't think that -- once I finish anesthesia
18 school, I really don't think someone is going to -- someone is
19 going to ask me my sexuality. They are going to tell me, "How
20 many times have you done this before?" They are going to care
21 if I'm good at it, and they want to know if I would take care
22 of their family member like if they -- if I was like one of
23 their family members.

24 So when I saw this, obviously I thought to myself this has
25 nothing to do with me being a good provider or how smart I am

Duron - D

1 or how well I'm going to be able to serve an underserved
2 community.

3 Q. And the second or the latter part of this policy regarding
4 the promotion advocacy defense of a homosexual lifestyle, is
5 this what you were referring to when you were talking about
6 wanting to protect current Union students by telling them to
7 not associate with you?

8 A. Yes. Just because of this part. I read it over and over
9 to make sure that nobody else was going to be getting in
10 trouble for what had happened to me. Once I read that last
11 sentence, I automatically told everybody to just exile me from
12 the island. I didn't want anybody to communicate with me
13 because I didn't know how far Union was going to take it
14 because of them going through my social media and my fiance's
15 LinkedIn accounts. I didn't know how far they were going to
16 take it, like, if they saw one small link, that they were going
17 to kick out students.

18 MR. SOUTHWICK: All right. I would like to -- the
19 last document I would like to introduce is -- with Alex will be
20 Exhibit No. 4, which is Alex Duron Title IX Complaint. I've
21 got that pulled up on my screen.

22 Any objections?

23 THE COURT: Hearing none, it will be received.

24 BY MR. SOUTHWICK: (Continuing):

25 Q. All right. Alex, I have Exhibit No. 4, which is your

Duron - D

1 Title IX complaint, and there are pieces that are redacted
2 relating to your address and things like that, but nothing else
3 has been redacted from this document.

4 In this Title IX complaint -- well, first of all, have you
5 seen this Title IX complaint before?

6 A. Yes, I have.

7 Q. And in this Title IX complaint, do you describe the
8 experience that you had with Union University?

9 A. Yes, I do.

10 Q. And can you tell us why you filed this complaint and what
11 you were hoping would come out of it?

12 A. I originally -- when I started this with you, I just
13 wanted -- I don't want any other student to go through what I
14 went through. I want to -- for them to be accepted into the
15 university for -- you know, like a normal university with their
16 GPA recommendations. How great is the school? I want to make
17 sure that there's -- I'm not going to get any more emails from
18 students telling me that they went through this; that they're
19 depressed because of this; that their parents forced them to go
20 to a Christian school to, you know, do conversion therapy.

21 There's so many things that in a bucket I could throw and
22 say these are all the things I want to happen. I just feel
23 that, in my eyes, if this is going to happen, I don't want it
24 to happen with my funding or anybody else in my family that
25 supports me that says, you know, "We don't -- we don't want

Duron - D

1 this to happen to anybody else." I feel that if it's going to
2 happen and they're allowing it to happen, then it should --
3 they should fund themselves, and I don't want to be paying for
4 this anymore.

5 Q. And have you gone through any of the interview process
6 with the investigators from the Office of Civil Rights?

7 A. I believe I spoke to a woman. I believe you were on the
8 call, though. Are you just talking about when -- what they
9 asked me about my story and things like that?

10 Q. Yeah. Yeah. So you responded to some questions.

11 And just for everyone, I'm going to use the abbreviated
12 term "OCR" to refer to the Office of Civil Rights, which is a
13 division of the Department of Education. So I'll refer to it
14 as "OCR."

15 During that OCR interview, what were you trying to
16 communicate to the investigator?

17 A. I was just trying to let her know because she -- she --
18 actually, from my -- seemed very surprised that this was still
19 going on. I wanted to display the severity of what -- what had
20 happened. Like I said, it made me emotionally distraught; but
21 at the same time, like I said, I feel like I'm a very strong
22 individual emotionally. It takes a lot to knock me down. So I
23 wanted to express to her that I was building up my education.
24 I was building up my -- you know, my knowledge of anesthesia,
25 to make sure that I'm a good provider, and that I -- I go to a

Duron - D

1 school that is going to accept me for who I am and also that
2 they are going to educate me, and I will make them proud as
3 soon as I come out. But I wanted her to see the severity of,
4 like, how -- how it impacted me and my family and people around
5 me.

6 Q. And what was her reaction, or what do you recall the
7 investigator -- how she responded to your statement?

8 A. I just feel that she was pretty surprised by this because
9 I'm in the medical community. I felt that she was not really
10 aware that this was going on because she started asking me more
11 in-depth questions as to, like, the hows and whys of what
12 happened. So I kind of felt like I was telling her a story for
13 the first time ever. That's what felt like was happening.

14 Q. Do you remember any discussion of whether or not your
15 complaint was timely or there would need to be a timeliness
16 waiver?

17 A. To be honest, no, I do not remember.

18 MR. SOUTHWICK: That's fine.

19 All right. Well, thank you, Alex. I really appreciate
20 you sharing your story and your experience with the Court. I
21 don't have any further questions for you; however, some of the
22 lawyers for the other parties may.

23 So with that, I'll turn it over to -- turn Alex over for
24 any cross.

25 THE COURT: For the government?

Duron - X

CROSS-EXAMINATION

BY MR. DAVIS:

Q. Good morning. My name is Elliott Davis, and I have just a few questions.

Your admission to Union University -- Union University was rescinded in July of 2020; is that correct?

A. Yes, sir.

Q. And you filed a Title IX complaint about that about a year later, in July of 2021; is that correct?

A. Yes, sir.

Q. And, to your knowledge, is that Title IX complaint still pending with the Office for Civil Rights?

A. Yes.

Q. So, to your knowledge, it has not been dismissed; correct?

A. No.

Q. Correct, it has not been dismissed; is that right?

A. Correct.

Q. And you did mention that you were interviewed by a staff member at the Office for Civil Rights. That interview took place in August of 2021; is that right?

A. I believe so, sir.

Q. Have you filed a Title IX lawsuit directly against Union University?

A. I believe that it was -- yeah, I believe that it was, but I would have to confirm with my attorney.

Duron - X

1 Q. To be --

2 MR. SOUTHWICK: I'll just make an objection. Calls
3 for a legal conclusion.

4 BY MR. DAVIS: (Continuing):

5 Q. To be clear, apart from this lawsuit, have you filed any
6 lawsuit against Union University?

7 A. No, sir.

8 MR. DAVIS: Thank you. That's all I have.

9 THE COURT: For the intervenors?

10

11

CROSS-EXAMINATION

12 BY MR. LIPPELMANN:

13 Q. Mr. Duron, my name is Mark Lippelmann. Thank you for your
14 testimony today. I only have a few questions as well.

15 So, first, can you identify the school that you're
16 currently attending?

17 A. The school I'm currently attending is in Fresno,
18 California, and it is a nurse anesthesiologist school.

19 Q. Okay. Are you currently attending a religious
20 institution?

21 A. No, sir.

22 Q. Okay. Do you currently have any applications pending for
23 admission to a religious institution?

24 A. No, sir.

25 Q. Okay. Let's see. So do I recall correctly that the time

Duron - X

1 frame of your application to Union University was around the
2 fall of 2019. Is that correct?

3 A. Yes, sir. I had an interview on November 20, 2019.

4 Q. Okay. And I know you mentioned several schools that you
5 applied to, but how many schools, in total, did you apply to
6 during that process --

7 A. I would say --

8 Q. -- if you recall?

9 A. I would say, including Union, it would be around four to
10 five.

11 Q. Okay. And just for my recollection, could you identify
12 those schools?

13 A. Texas Western University in Fort Worth; Texas Christian
14 University in Fort Worth; Baylor School of Medicine in Houston;
15 and then Union University in Jackson, Tennessee.

16 Q. Okay. And you ultimately decided to attend Union instead
17 of any of those other -- pursuing any of those other schools;
18 correct?

19 A. I did, yes.

20 Q. Okay. At the time you applied for admission to Union
21 University, you knew that Union was a Christian school;
22 correct?

23 A. Yes, sir.

24 Q. Did you also know at that time that Union University had a
25 community values statement expressing religious beliefs?

Duron - X

1 A. At the time of application, no.

2 Q. Okay. Let's see. I would like to share a document quick
3 here.

4 All right. I'm trying to show you right now a copy of
5 what has been marked as Plaintiffs' Exhibit No. 1, which I'll
6 represent is the email that you described in your direct
7 testimony. If I could, I would like to direct your attention
8 to the language that I am highlighting here. The sentence that
9 begins "As part of the application process, you agreed to
10 adhere to and uphold the values and expectations set by the
11 University. Attached to this correspondence is a copy of Union
12 University's Community -- Community Values Statement for
13 Graduate and Nontraditional Programs which you signed on
14 September 10, 2019."

15 Is it accurate that you received and signed a copy of
16 Union University's value statements prior to your admission?

17 A. Yes, sir.

18 Q. Okay. And did you understand that students of
19 University -- of Union University were expected to live in
20 accordance with the school's policies?

21 A. Yes, I did that. I signed that document. I read over it
22 and understood there was a lot of things on there that were, I
23 guess, against school policy.

24 Q. Okay. Were you -- when you signed that document, were
25 you, in fact, willing to live in accordance with that document?

Duron - X/ReD

1 A. They -- when it's -- when I read that document and that,
2 obviously, I'm not able to live with -- or be -- you know, any
3 homosexual, I think, activities -- I forgot what it said, but I
4 didn't take it so literal, as the way the document said. I
5 just thought that when I was on the campus I wasn't able to,
6 obviously, kiss, hold my fiance's hand, you know, express any
7 public displays of emotion. That's the way I took it.

8 Q. Okay. Do you agree or disagree with Union's religious
9 beliefs on sexuality?

10 A. I would say I have to disagree.

11 MR. LIPPELMANN: Okay. Thank you. Those are the
12 only questions that I have, unless CCCU has any remaining
13 questions for the intervenors.

14 MR. SCHAERR: No questions from CCCU.

15 MR. SOUTHWICK: Your Honor, this is Paul Southwick.
16 I have just a small amount of redirect.

17 THE COURT: Go ahead.

18
19 REDIRECT EXAMINATION

20 BY MR. SOUTHWICK:

21 Q. Alex, counsel for one of the intervenor defendants asked
22 about what you're doing now. Could you explain to the Court
23 the program that you are in now and when you were able to apply
24 and get in there?

25 A. So as soon as I was turned away from Union University,

Duron - ReD

1 thankfully the medical community had reached out to me. They
2 had come together and they all wanted to see my transcripts and
3 wanted to talk to me on the basis of seeing actually who wanted
4 to take me, and pretty much they displayed all the schools,
5 said "Which one do you want to go to? Because if you got into
6 Union, you can get into our schools also."

7 So the main one was Fresno, California, called National
8 University. He promised me that he would -- this, obviously,
9 is a school where everybody's accepted, high diversity, and he
10 just told me it's going to be a very vigorous program, which I
11 expected, for the next three years. And it's pretty much like
12 a 60 to 70 hours a week study program. So that's kind of how I
13 ended up over here.

14 But there was multiple decisions for me to be made, not
15 only with living, obviously acceptance, and I didn't want to go
16 into another organization where I was going to feel threatened.
17 Not even in the least.

18 Q. Alex, did you -- were you able to stay on the same
19 schedule as you would have been at Union, or was your education
20 delayed by a semester or more?

21 A. It was going to be delayed for sure. It was delayed,
22 actually, almost seven months -- six to seven months because
23 the programs don't usually start -- well, they would have
24 started, actually, the next month -- most of the programs --
25 but I didn't have time to get all my stuff in.

Duron - ReD

1 Honestly, Paul, I wasn't emotionally ready to jump into
2 another program. I was still distraught, and I felt that
3 jumping from July to August into another program and moving
4 within a week or two was just not going to work. I didn't want
5 to fail and look like I wasn't able to do it. So I had to
6 delay my education until January.

7 And everybody understood why I made the decision. And
8 then finally after -- then COVID hit. So I was kind of stuck,
9 anyways, in the city, and so I decided to just take FEMA
10 contracts and work as a nurse at the bedside.

11 Q. All right. So you worked as a nurse up until you were
12 able to transition to this new program; is that right?

13 A. Yes, sir.

14 Q. And how far along are you in the new program?

15 A. I am going to complete my first year at the end of
16 December. So I have, after that, two more years.

17 MR. SOUTHWICK: Great. Well, nothing else from me,
18 Alex.

19 I believe that you are -- you're free to go unless there's
20 anything from any other counsel.

21 THE COURT: Thank you for your time. Thank you for
22 your testimony.

23 THE WITNESS: Thank you, Your Honor.

24 THE COURT: You're welcome.

25 Call your next.

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1 MR. SOUTHWICK: Thank you, Your Honor. This is
2 Paul Southwick. I would like to call our next witness,
3 Veronica Bonifacio Penales. I believe I saw her earlier.

4 There she is. Great.

5 THE COURT: If you would raise your right hand.

6
7 VERONICA BONIFACIO PENALES,
8 called as a witness in behalf of the Plaintiffs, being first
9 duly sworn, is examined and testified as follows:

10
11 DIRECT EXAMINATION

12 BY MR. SOUTHWICK:

13 Q. Thank you, Veronica. Thank you for being here today. Can
14 you tell the Court where you are speaking from?

15 A. Yes. I'm currently at Baylor University in Waco, Texas.

16 Q. And what year are you in your studies?

17 A. I'm a junior.

18 Q. Great. Can you tell us a little bit about your
19 background, where you grew up, and that sort of thing?

20 A. Yeah. So I am from Shreveport, Louisiana, and I currently
21 live in Waco, Texas for University, of course, and I -- yeah, I
22 graduated from high school in -- and I'm going to graduate in
23 2023, hopefully.

24 THE COURT REPORTER: I'm sorry. You cut out. Can
25 you repeat your answer?

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1 THE COURT: That was the court reporter who did not
2 get your full answer. So why don't you just ask it again and
3 let's get a complete answer.

4 BY MR. SOUTHWICK: (Continuing):

5 Q. Sure. Veronica, I was just asking you about your
6 background. You know, where you grew up, and that sort of a
7 thing.

8 A. Yeah. So I'm from Shreveport, Louisiana. I currently
9 live in Waco, Texas, as a full-time student. I graduated from
10 high school in 2015 and will be graduating from Baylor
11 hopefully in 2023.

12 Q. And what originally drew you to Baylor? Why did you
13 apply, and how did that whole process go?

14 A. Yeah. So Baylor was actually my safety school, and I got
15 in. It got me the most scholarships. It was close to home but
16 not too close, especially with my dad getting a little sick and
17 dealing with medical issues.

18 So, yeah, Baylor gave me the most scholarships for my
19 academic honors, and that's why I'm here.

20 Q. What was it like for you when you first arrived on campus?

21 A. So the first time I went to campus I attended something
22 called Line Camp, and it was just the incoming freshman
23 program, getting to know your peers, et cetera; and, honestly,
24 I was just a little bit scared of -- just activity that we took
25 part in as Line Camp students. So I -- I was just a little

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1 nervous about that and ended up actually going back in the
2 closet.

3 Q. So, yeah, could you talk a little bit about that? About
4 your sexual identity development, how that was in high school,
5 and then how that changed when you got to Baylor?

6 A. Absolutely. So I actually came out in a really big way in
7 high school. During our senior homecoming pep rally -- it was
8 a blackout pep rally; so we were all wearing all black. I came
9 out with a pride flag in the middle of our alma mater where one
10 specific line says the words "with pride." It was a great
11 experience. That was probably one of my favorite coming-out
12 experiences. It was just done in a super big way and gave me a
13 lot of confidence moving forward as a member of the LGBTQ
14 community in such an out way.

15 However, once I came to Baylor, I just kind of heard about
16 all of the perspectives and just, like, the way religion was
17 kind of everywhere here at the university. It made me nervous.
18 I didn't really know the people that I was with yet, and so I
19 just decided I might as well play it safe and just go back in
20 the closet in the meantime.

21 But, then, I mean, you enter your actual weeks of college
22 and you realize that these are supposed to be the most
23 formative years of our life. You can't do that in the closet.
24 That's why I came out when I did.

25 Q. Sorry. I muted myself.

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1 Tell me a little bit about how you eventually found the
2 queer or LGBTQ community at Baylor, and what was that like for
3 you?

4 A. Yes. So I -- I came out on social media on National Bi
5 Visibility Day of that year. I came out with just a simple
6 post. It was actually the same picture I used when I came out
7 in high school, and so the day after that -- actually that
8 experience was pretty positive.

9 The day after that we had a football game, and that kind
10 of all went downhill from there. But, honestly, like, the
11 queer community is here at Baylor. We're big; we're present,
12 and we're pretty active. It's just you don't really find them
13 because we don't have the -- the ability to display ourselves
14 appropriately on campus like other clubs can do. It's either
15 you go out searching for them or they find you because you come
16 out in a loud way. So, yeah.

17 Q. And has the Baylor queer community attempted to organize
18 and get any kind of official recognition for the club?

19 A. Yes. So this fight actually started way before I became a
20 student here. It's a ten-year-plus -- I believe this is our
21 eleventh year fighting for national -- or official charter
22 under Baylor University's New Student Programs Handbook, which
23 is kind of what dictates which student organizations are able
24 to be chartered.

25 So what that process looks like is basically the student

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1 organization cannot advocate for anything that goes beyond any
2 of Baylor's policies.

3 Gamma is a support group for its students. So this
4 organization, Gamma Alpha Epsilon, has been trying to get
5 charter and recognition officially from the university, which
6 has not happened and still hasn't happened yet. But they were
7 kind of the community that took me in when I was facing all of
8 the discrimination that Baylor put us under. So, you know,
9 without them, it would have been a lot harder.

10 Q. Can you tell me a little bit about what -- what does it
11 feel like being a member of the LGBTQ community at Baylor,
12 trying to get the support of your university for your support
13 group and then having that denied time and time again? What --
14 how does that feel? What is the impact of that on you?

15 A. Yeah. So it's kind of a twofold experience. As a student
16 advocate on campus, I get a lot of Baylor saying no to me in
17 kind of efforts that I push for, and the LGBTQ issue is not any
18 different from that. So I remember kind of standing up and
19 sticking your neck out and saying, like, "Hey, like, we are
20 present. We have the support from students, faculty, alumni,
21 and we're just waiting for you to actually, like, listen."

22 And it hurts even more when the University says, "Okay.
23 We're going to be pushing for diversity and inclusivity
24 policies. We're going to put all of these blanket statements
25 out," but when it comes down to it, the university actually

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1 doesn't do anything.

2 So they can start as many initial talks as they want.
3 When it comes down to it and we're discriminated against,
4 there's nothing after. When we're actually asking for them to
5 officially charter us, there's nothing after.

6 From a more personal perspective, like, I'm honestly so
7 tired of pushing for the same issue, and I know everybody who
8 came before me is tired of that too; but it's not something
9 we're going to stop pushing for because there's only one right
10 answer to this.

11 Q. Veronica, you talked about some of the efforts and some of
12 the support from the community and how that stands in stark
13 contrast to the University's actions.

14 Can you tell me about some of that -- the faculty and the
15 other student groups? Tell me about some of that support for
16 the LGBT club.

17 A. Absolutely. So the year after I faced all the
18 discrimination on campus, I wrote a bill trying to push for
19 Gamma's charter and faced a lot more discrimination after that.
20 But the efforts that we put in place following the writing of
21 that bill looked like getting faculty senate to write a
22 resolution voicing the support of faculty. We also had
23 multiple letters from student organizations saying, like, "We
24 support Gamma and their efforts for charter." We also had a
25 lot of supporting alumni letters, just kind of saying, like,

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1 "Yes, we want this to happen," and then what we got in response
2 to that was actually nothing.

3 So that was really, really hard, but we still have all of
4 these letters from multiple groups of people who encompass what
5 Baylor calls "the Baylor family," saying, like, "We support
6 this."

7 We're just waiting on Baylor to listen.

8 We have also hosted multiple, like, marches and, like,
9 events on campus that have shown faculty support because of the
10 faculty in attendance, and it's great.

11 Q. That's wonderful.

12 What are some of the practical impacts of not being a
13 chartered club? Does that affect, you know, where you are
14 allowed to meet or the money that you have or how your club is
15 perceived by other students on campus? Can you talk about
16 that?

17 A. Yeah. So probably in year ten of the fight, Gamma was
18 finally able to request a room for club meetings. Granted,
19 it's probably not enough to hold the amount of students who
20 want to attend, so we're limited in the number of kids we're
21 allowed to actually have in these events, especially with COVID
22 being a factor. But basically not being allowed to be an
23 official Baylor club means we don't have access to student
24 funding. We can't advertise our clubs for people who need it.

25 Like, if I was a student who came out and faced so much

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1 discrimination and I didn't know Gamma existed, you don't have
2 the support that I did when I went through all my
3 discrimination because Gamma is not allowed to advertise, et
4 cetera, et cetera.

5 But it's on so much more of the principle as well, where
6 Baylor won't even say, like, "Yes, like we recognize our LGBTQ
7 students and the support group that they have," and that's
8 honestly where a lot of the pain and sadness comes from the
9 students who are in this organization.

10 Q. Does it make you and the other LGBTQ students feel like
11 you're essentially relegated to second-class status at Baylor?

12 A. Yeah. I would even say third-class because the other
13 minority students even come before us, but they're still not
14 the basis of a regular student.

15 Q. You shared or you referenced a little bit of how important
16 it was to find the queer community, even though it's kind of
17 underground and not official, and that it was really important
18 for you to have that when you were going through your own
19 experience of discrimination. Could you talk a little bit
20 about that and kind of when that started for you personally?

21 A. Right. So I would say that Gamma support kind of
22 immediately happened after I came out because, again, it was
23 with an Instagram post, and I tagged the organization because I
24 happened to know it existed because I did a lot of my own
25 personal research after Line Camp and being so scared to be out

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1 as a freshman, and so I tagged them in my post, and they
2 reached out, and they were like, "This was beautiful." Like,
3 "You need to let us know if anything happens." And, you know,
4 that tone of voice already, like, seemed like they already
5 expected something to happen. Granted, giving everything on
6 campus, that's understandable.

7 So when they reached out, I was like, "Okay. Amazing."

8 I did a lot more work with them throughout my work as a
9 student senator and writing that bill advocating for their
10 charter, but the biggest issue is unless you know Gamma exists
11 or even, like, want to kind of explore whether or not this
12 university has an LGBTQ organization, if you are not actively
13 searching or being reached out to by Gamma, which they do a
14 great job already, you don't know that the support groups
15 exists, and you are kind of stuck in the dark.

16 Q. Just to clarify on the Gamma group, which is the LGBT
17 support group, it sounds like, based on your testimony, that
18 the student government officially endorsed the club, the
19 faculty government endorsed the club, and that a variety of
20 minority student organizations, sororities, fraternities
21 others, also gave that kind of endorsement. Is that a fair
22 characterization?

23 A. Yes. I would also add that our alumni network also voiced
24 their support in accordance with all those other groups.

25 Q. And despite all of that support from pretty much every

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1 aspect of the university community, did Baylor approve the
2 Gamma charter when it was submitted in this past -- the spring
3 of 2021?

4 A. No. All we got was a promise from Baylor to look into
5 solutions. But, honestly, to me, and as a student activist, it
6 just sounds like they're creating more initial talks with no
7 concrete action after; so no.

8 Q. And you mentioned earlier that, you know, you had started
9 to voice your support for getting a bill to get this charter
10 going, and I believe you experienced some harassment or
11 discrimination. Can you talk to us about any of the specific
12 instances of harassment or discrimination at Baylor?

13 A. Yes. So I specifically remember after -- actually, before
14 the -- before the actual bill was seen in senate, literally
15 hours before, when we were still prepping, we got an email from
16 a student, and it was sent to all of the senators, just kind of
17 saying, like, "If you support this LGBTQ group, you support an
18 adulterous club," et cetera, et cetera. So that was one
19 instance.

20 Following that and the actual passing of the bill,
21 immediately, the next day, *The Lariat*, our school newspaper,
22 kind of put the news out that it had passed. So the University
23 knew about it. People would --

24 THE COURT: You just froze. Wait. You just froze.
25 Can you go back?

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1 THE WITNESS: I'm so sorry.

2 THE COURT: You need to go back to where I stopped
3 hearing you. You talked about what you received about the
4 adulterous club, and then I would start -- I would pick up what
5 you had to say after that.

6 THE WITNESS: Yes, ma'am.

7 So, yes, we got an email -- all the senators did --
8 saying, "Do not pass this bill. Because if you pass this bill,
9 you are supporting an adulterous club." So that was definitely
10 super emotionally jarring right before we present this bill to
11 a bunch of students.

12 And so after the bill passed, students immediately knew
13 about it the next day because our school newspaper reported it
14 since it was a pretty big deal on campus. And throughout the
15 next few weeks I started getting sticky notes. I got a Bible
16 left on my dorm -- I got a Bible, and it kind of, like,
17 highlighted notes that were super homophobic or had pages
18 dog-eared where it talked about how homophobia -- or homosexual
19 behavior is against the Bible, et cetera, supposedly. And
20 then -- yes, so those are the sticky notes.

21 BY MR. SOUTHWICK: (Continuing):

22 Q. Veronica, I'm just putting this image up just as a
23 demonstrative. Are these some of the sticky notes you were
24 talking about? And can you tell us how there came to be so
25 many and what this was like for you?

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1 A. Yes. So, actually, this photo was taken way before. I had
2 a lot more that it couldn't even fit on the sign by the end of
3 the semester. But I woke up one morning and there was a sticky
4 note on my door and, you know, it says what it says, and I took
5 it down and I was like, okay, well, somebody really has strong
6 thoughts. I'm just not going to report it, considering how I
7 haven't had any success reporting before.

8 It started off kind of slow and then it picked up. So it
9 started, like, once a week, and then it picked up to every
10 other day, and then it picked up to every day.

11 Again, I didn't report it until one of my friends came
12 knocking on my door on a test day, because we just had a test,
13 like, super early, so she woke up before I did, and she saw the
14 note. And she was like, "This is not okay. You have to report
15 this. Like, how many have you gotten?" Et cetera, et cetera.

16 So I didn't report it until my friend pushed me to; but,
17 yeah, I just got so many of these notes that -- I don't know.

18 Q. And how did the notes make you feel? Did you feel -- did
19 they make you feel like an outsider, like you weren't safe?
20 Could you talk about that?

21 A. Yeah. So, I mean, I started -- I started feeling unsafe
22 on campus, especially living in the dorms that I lived in,
23 where I had a two-year contract and couldn't break lease, way
24 before, like, probably immediately after I came out, things
25 just got weird. And so when this happened my second year, I

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1 was like, okay, like, you can't -- there's -- what else are you
2 going to do about it? Report it when nothing else happens
3 after that? So I just started distancing myself from the
4 community anyway. I was in my dorm less and less.

5 But, honestly, my thoughts were just like I just hope
6 other people don't start putting more notes in because the view
7 of this dorm, this university, is pretty clear already. I
8 don't know. I just -- I hated it. My mental health shot down
9 after this. So --

10 Q. I can imagine.

11 At some point it sounds like you did report it. Could you
12 tell us again who you reported it to and then how that
13 process -- how that process went and if anything came of it?

14 A. Right. Specifically, the notes, or do you want me to
15 start with the first reporting process?

16 Q. You can go ahead and start with the first reporting
17 process, yeah.

18 A. Okay. So when I came out, again, at first, it was with an
19 Instagram post. The following day I had a football game, and
20 it was a specific tailgate for my honors college. So one of my
21 friends painted a rainbow on my thigh. I posted that picture,
22 and that's the photo that got a lot of hate comments.

23 I deleted the comments but not -- after I -- I
24 screen-shotted them, and so I reported that instance first.
25 Specifically because the one -- there were multiple comments,

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1 but the one that, like, hurt the most was one that said hashtag
2 F-A-G runner, because I was a flag runner during the game, and
3 I reported it to HRC leadership, who was kind of just, like,
4 the exec committee of my dorms, and my residence hall director,
5 and I said, like, "Hey, like, this woman is on our leadership
6 committee, and I don't think that is very representative of
7 what the HRC stands for," and so he told me, "Okay. Thank you
8 for bringing this to our attention. We'll look into it." He
9 referred me to the counseling office, referred me to the
10 chaplain, and then said, "Okay. Next semester she's not going
11 to be on the leadership committee."

12 And that was the example of my first reporting.

13 The next semester I was the one who wasn't on the
14 leadership committee and she still was. Fair enough.
15 Whatever.

16 And then that's when they started pushing me to go to
17 counseling and kind of like saying, like, "You need to go to
18 counseling," and sending me numerous emails, making it seem
19 suggestive in saying, like, "We think this would be good for
20 you," but it was pretty clear that they were, like, "Go to
21 counseling."

22 I had a few talks with my chaplain as well, and that
23 pretty much summed up the Instagram reporting.

24 With regards to the sticky note reporting, again, like I
25 said, I didn't report it until after my friend pushed it --

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1 pushed me to report it because of the experience I had before.
2 I talked to my community leader, who was kind of like the RA of
3 my hall, and she said that she was going to report it to the
4 residence hall director, as well as seeing where that next step
5 is, and just keep me in the loop.

6 So she took pictures. She sent it to Alex, our residence
7 hall director, and then I didn't hear back for a couple of
8 weeks. I still got the notes. So I asked him again, like,
9 "Hey, do you have any updates for me?" And it was,
10 essentially, kind of like, "We passed this on to the
11 higher-ups. I don't have any updates, but I will let you know
12 when I do." I haven't heard back since.

13 Again, I think I also got referred to the counseling
14 office; but other than that, that's basically the extent of the
15 reporting process.

16 Q. So essentially you experienced all the harassment that you
17 described and you reported it on two separate occasions, and
18 essentially nothing was done? Is that fair to say?

19 A. Yes.

20 Q. Did it feel a little bit like you were being punished for
21 reporting by them suggesting to go see a counselor, or how --
22 how did that feel for you?

23 A. I felt like I was being referred to the counseling office
24 so that they could ask me about being a part of the LGBTQ
25 community but maybe not necessarily because I was reporting

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1 these issues. It's just that that seemed to be their scapegoat
2 for the solution of this, and that kind of hurt a lot too.

3 MR. SOUTHWICK: Let's see. My camera's battery
4 appears to have died, but I'll just keep going without it, if
5 that's okay, and I'll change out the battery between witnesses.

6 THE COURT: That's fine.

7 BY MR. SOUTHWICK: (Continuing):

8 Q. So, Veronica, in addition to the Instagram harassment, the
9 F-A-G note harassment, and the Bible being left with passages
10 underlined for you, have you experienced any other kinds of
11 either harassment or discrimination while at Baylor?

12 A. Yes. So a lot of the stuff happens on the regular now,
13 and you either just shrug your shoulders or -- you know,
14 because it happens all the time, but a few -- a few do stick
15 out to me.

16 So one instance was when I was in the dorms, and we had a
17 late study session. Visitation times end, I believe, at 1:00
18 a.m., and so I had -- one of my friends who actually lived -- I
19 lived on the third floor; she lived on the second floor, and
20 she just got done studying, and we were just going to go to my
21 room and make some Ramen, you know, just regular late-night
22 stuff. And we had a CL who -- again, community leader. He was
23 making rounds, and he literally stopped us right as soon as we
24 got off the elevator. And he was like, "Who are you? Do you
25 have your ID? Are you a student here? Do you even live in

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1 this dorm?" To my friend.

2 That was just weird because Audrey has lived there for as
3 long as I have, and we're both pretty active in that community.
4 So I thought it was absolutely absurd for him to be stopping
5 one of my friends, especially when further down the hall there
6 was a group of, like, eight, or so, guys with a bunch of girls
7 who lived in, like, the dorms, and they were leaving, but he
8 didn't stop them. And visitation times only apply to guys on
9 the girls' side. So I don't really know what the issue with
10 that was, but I just felt so, like -- I don't know. Like, that
11 was just wrong. I thought it was.

12 Q. Did it feel like you were being targeted because you were
13 with someone of the same sex and you were both part of the
14 LGBTQ community?

15 A. Yeah. I felt targeted, shamed. I don't know. He came
16 out for no reason at all especially because he should have
17 known that that student lived in that dorm.

18 Yeah, I know I felt so embarrassed for some -- for no
19 reason at all. I don't know. I was so demoted. But, yeah,
20 that was one instance.

21 There's been a few with professors, as well, where they
22 kind of just treat you a little differently. I know this made
23 me -- there's one woman professor, who I'm actually still in
24 her class, she makes me more uncomfortable than any other
25 professor I've ever had because she teaches in a women and

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1 gender studies class, literally talking about equality every
2 single class time. But she targets me in class, and I don't
3 know if it's because I'm Asian or if it's because I'm part of
4 the community, but she would make sure to especially crane her
5 neck over my desk to make sure I'm not working on anything
6 else.

7 There was one instance where we were studying outside and
8 we were spaced out enough to not have masks on. We were
9 vaccinated, and so I didn't have my mask on, and neither did
10 she. She was in the middle of lecture. She just stops, and
11 she's just looking dead at me, and she goes, "Why are you
12 staring at me? It's scaring me," in front of the whole class.
13 And, I don't know, I felt like I wanted to throw up after that,
14 but I was -- I was like "It's because you're talking, and I'm
15 trying to pay attention," but just having to stop in the middle
16 of class to say that -- I don't know. I hated the way it made
17 me feel, and no student should be feeling like that, especially
18 when they're just trying to pay attention, so --

19 Q. Thanks for sharing that.

20 I want to ask a little bit about kind of the general
21 culture at Baylor around dating, if there's, like, a Ring by
22 Spring type culture there, and are heterosexual students
23 allowed to, you know, display affection and that kind of a
24 thing? Can you talk a little bit about that?

25 A. Yeah, Ring by Spring is definitely something that is

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1 celebrated here. There's also something called an MRS degree
2 that people say exists on campus; but, yeah, like, people get
3 engaged in the middle of campus all the time if they're in a
4 heterosexual relationship. So stuff like that is seen all
5 throughout campus. PDA is very much a thing between
6 heterosexual individuals on campus, and it's pretty much, like,
7 normal for them too. But if anyone in the LGBTQ community were
8 to do it, you know, they would get some weird looks or, like,
9 somebody would say something about how they should stop.

10 I remember one instance I was walking across the student
11 union building, and there were two guys who happened to just,
12 like, share a kiss, and they were told to put their masks on.
13 I thought that was interesting because nobody else talks about
14 masks any other time, so --

15 Q. Veronica, would you feel safe or comfortable showing a --
16 you know, nonsexual affection, whether holding hands or, you
17 know, cuddling someone who is of the same sex, like a partner
18 of the same sex? Would you feel safe and comfortable doing
19 that or not?

20 A. I wouldn't. We've also talked about, within Gamma groups,
21 how a lot of us aren't, just because the call-out itself causes
22 a lot more pain than them just, like, just not being -- we
23 would rather not have to show our affection if the call-out
24 that results from it just causes pain. We will save that for
25 somewhere else, which is sad, because it shouldn't be that way.

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1 Q. All right. Veronica, I'm going to try to show you a few
2 documents. So I'm going to put them here on the screen. The
3 first document I would like to go over with you is the Baylor
4 University Statement on Human Sexuality, and this is on -- this
5 is on plaintiffs' exhibit list as Baylor policy language. I
6 would like to introduce this as Exhibit No. 5.

7 THE COURT: Hearing no objections, it'll be received.
8 BY MR. SOUTHWICK: (Continuing):

9 Q. All right. Veronica, this is Exhibit No. 5, and I imagine
10 that you are at least somewhat familiar with Baylor's Statement
11 on Human Sexuality. So have you seen this before?

12 A. I have, yes.

13 Q. All right. And I'm just going to read a few -- a couple
14 parts of it.

15 So, first of all, it says, "Baylor University welcomes all
16 students into a safe and supportive environment in which to
17 discuss and learn about a variety of issues, including those of
18 human sexuality."

19 Would you say that that statement feels true for you? Do
20 you feel like it's a safe and supportive environment, or do you
21 have a different perspective?

22 A. I don't think that's true. I think it's a very
23 pick-and-choose environment.

24 Q. The statement goes on to say "The University affirms the
25 biblical understanding of sexuality is a gift from God.

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1 Christian churches across the ages and around the world have
2 affirmed purity and singleness and fidelity in marriage between
3 a man and a woman as the biblical norm. Temptations to deviate
4 from this norm include both heterosexual sex outside of
5 marriage and homosexual behavior."

6 I would like to ask you about that phrase "homosexual
7 behavior." Do you feel like you have an understanding of what
8 is permitted or not permitted for people who are bisexual or
9 gay or lesbian at Baylor?

10 A. No. Because, specifically, I don't know sometimes what
11 they mean by "behavior," because sometimes people get yelled at
12 for trivial things with, like, in the context of homosexual
13 behavior, but I know for sure that me and the whole community
14 here, we just know that it's not allowed. Anything. And
15 Baylor has -- like, they can say, "You standing this close to
16 her is not allowed." Essentially, that's what it feels like.
17 But they don't really give us specific dictations about what
18 "behavior" is defined as. We just know that homosexuality is
19 not allowed. That's the vibe of the whole university.

20 Q. Does it feel like Baylor is essentially, you know,
21 criminalizing same-sex relationships and identities for its
22 LGBTQ students on campus?

23 A. Yes.

24 Q. Is it true that you could be subjected to discipline if
25 you are turned in for engaging in homosexual behavior?

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1 A. I haven't seen it, but I know it's true. Yeah, I haven't
2 seen it.

3 Q. Now I'd like to ask about this final line here. "It is
4 thus expected that Baylor students will not participate in
5 advocacy groups which promote understandings of sexuality that
6 are contrary to biblical teaching."

7 Is it your understanding that this is the part of Baylor's
8 policy that is used to deny the LGBTQ student club on campus?

9 A. Yes. But I don't think it's a valid argument because we
10 have never been an advocacy group. We have always been a
11 support group, and it just feels like Baylor thinks that the
12 way we support students is our advocacy when it's clearly not
13 that case. Nobody's pushing for a, quote/unquote, "gay
14 agenda."

15 Q. All right. The second page of the Baylor policy language
16 document that we have is this sexual conduct, and this -- this
17 is from the Student Code of Conduct book. And, let's see, the
18 policy is very similar to the language we read from the human
19 sexuality statement; however, this is in terms of what students
20 can or cannot be punished for, and it says, "thus, It is
21 expected that Baylor students, faculty, and staff will engage
22 in behaviors consistent with this understanding of human
23 sexuality."

24 How does that make you feel as a member of the LGBT
25 community, knowing that not only does Baylor have this human

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1 sexuality policy but it also has essentially a criminal code of
2 conduct for you about sexual conduct?

3 A. Yeah, I think it's just wrong. It makes me feel like
4 Baylor honestly just doesn't care about its LGBTQ students or,
5 like, a lot of its students. It's just so backwards.

6 Q. At the end of this policy language, the University states
7 that under no circumstances may this policy be construed to
8 waive any of the rights granted to Baylor University under the
9 exemption issued to the University on September 26, 1985, by
10 the U.S. Department of Education, covering certain regulations
11 under Title IX of the Education Amendments of 1972 or under the
12 religious exemption Section 702 Title VII of the Civil Rights
13 Act of 1964.

14 Veronica, are you generally familiar with Title IX and its
15 prohibition on sex discrimination?

16 A. Yes.

17 Q. And do you have an understanding of whether or not Baylor
18 has asserted any type of religious exemption to allow it to not
19 comply with certain parts of Title IX?

20 A. Yes? Yes.

21 Q. I could say that in a different way.

22 A. Okay.

23 MR. SOUTHWICK: Let's go ahead and pull up the Baylor
24 religious exemption. So I would like to introduce the Baylor
25 Exemption Assurance as Exhibit No. 6.

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1 Any objections?

2 MR. LIPPELMANN: No objection from the religious
3 school intervenors.

4 THE COURT: Thank you. It will be received.

5 BY MR. SOUTHWICK: (Continuing):

6 Q. All right. Veronica, I'm not going to -- this is
7 Exhibit No. 6. I'm not going to make you answer a lot of
8 detailed questions about this document. You can see on the
9 first page here that this is a document from 1976, at least,
10 from Baylor University to the Department's Office of Civil
11 Rights. And this is well before you were born; so I'm not
12 going to ask you too much here about it, but I did want to go
13 through it a little bit.

14 And, essentially, as you look through this document, it
15 talks about Baylor's views on premarital unchastity, on
16 pregnancy, termination of pregnancy, and a variety of other
17 factors. And this is the document that Baylor used to get a
18 religious exemption from compliance with certain aspects of
19 Title IX regarding those issues.

20 And then you can see that the -- further down, that this
21 was responded to quite a bit later, about ten years later, by
22 the Department of Education, and in there -- on the screen it
23 says, "Baylor University is hereby exempted from the
24 requirements of certain sections of the Title IX regulations,"
25 and then it lists those specifically.

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1 I can represent to you that there's nothing in here
2 specifically about gender identity or human sexuality, but it
3 does discuss sexual immorality in general.

4 As a student at Baylor University, as -- as a woman, as a
5 member of the queer community, how does it feel knowing that
6 Baylor has historically sought and received a religious
7 exemption from Title IX from the Department of Education? How
8 does that feel for you as a student?

9 A. I don't think it's right, and I also don't think the
10 Department of Education is granting its exemptions.

11 Baylor doesn't deal with minority issues in a way that
12 should be dealt with. We obviously know how they're dealing
13 with LGBTQ issues. Don't -- women's issues on campus are --
14 like, they have been historically not good. So, like, I
15 honestly don't understand why Baylor has been receiving such
16 exemptions.

17 And if they continue to receive exemptions, then they
18 should be held accountable for what those exemptions mean on
19 behalf of actually supporting and caring for its students.

20 Q. Does it make you feel less safe as a student at Baylor
21 knowing that Baylor has in the past and could again get a
22 religious exemption to immunize itself from complying with
23 Title IX?

24 A. Yes. Especially now that we have no other basis of
25 getting Baylor to be held accountable or, like, no other

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1 support from people who are supposed to be caring about our
2 education in a supportive environment. Who are we supposed to
3 ask for help now if Baylor doesn't listen?

4 Q. And if Baylor doesn't listen and -- what if the government
5 doesn't listen to you either?

6 A. Then that feels terrible. Obviously, just hearing that is
7 scary, but that's what it kind of feels like right now, so --

8 Q. Well, Veronica, the last document I would like to ask you
9 about is the Title IX complaint that you filed, and I've got it
10 up here right now. And this is listed on plaintiffs' exhibit
11 list as Veronica Penales' Title IX Complaint. I would like to
12 introduce it as Exhibit No. 7.

13 MR. DAVIS: No objection from the federal defendants.

14 THE COURT: Thank you.

15 Anything from the intervenors?

16 Hearing nothing, it will be received.

17 BY MR. SOUTHWICK: (Continuing):

18 Q. All right. Veronica, can you see the Title IX complaint I
19 have up here on the screen?

20 A. Yeah.

21 Q. And have you seen this document before?

22 A. Yes.

23 Q. And this is the Title IX complaint that you filed with the
24 Office of Civil Rights; is that correct?

25 A. Yes.

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1 Q. And it looks like -- if we kind of look down here, it
2 looks like you filed it -- keep on going down -- on July 23 of
3 2021. So that is this year. Does that sound about right?

4 A. Yes.

5 Q. And in it you describe a lot of the experiences that you
6 shared with the Court today, and I want to ask you, you know,
7 why -- why did you file this Title IX complaint; and, you know,
8 what are you hoping comes out of it?

9 A. Right. So Baylor is trying to become a Tier 1 research
10 university. It's trying to up its reputation as this
11 university that is amazing and cares about its students and
12 pushes for diversity and inclusivity, commitments, and policy.
13 Everything that sounds right on paper. But I took part in this
14 lawsuit essentially because Baylor needs to realize what it's
15 doing, how it's hurting its students, and how its perpetuating
16 such a harmful and toxic educational environment for minority
17 students, especially students in the LGBTQ community.

18 I just don't think it's right for it to continue kind of
19 subjecting all of its students to harrassment and
20 discrimination and other harms on campus when, even if we are
21 willing to report these issues, nothing -- nothing gets done.
22 So where's the support there?

23 I don't know. I just think it's not right not to -- it's
24 just not right to be continuing this kind of environment where
25 we get discriminated against, and there's nothing that gets

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1 done. But Baylor can continue to keep pushing and saying that
2 they're doing everything they can in the name of diversity and
3 inclusivity when it's clearly not true.

4 Q. Veronica, would it make you feel safer and like your
5 rights would be protected if the Federal Government was willing
6 to hold Baylor accountable for any violations of Title IX that
7 you have reported? Would that make you feel safer and like
8 your rights were more protected?

9 A. Yes. Because that would honestly make me feel like I'm
10 protected by the law, which I should be as a student in
11 America. It also tells me that the government doesn't care
12 about people's rights to discriminate versus a student's right
13 to exist on a campus like Baylor.

14 MR. SOUTHWICK: Well, thank you very much, Veronica,
15 for sharing your experiences with us. I know that some of them
16 are difficult to talk about.

17 I don't have any further questions for you right now. So
18 I'll turn it over to counsel for other parties. They might
19 have some other questions for you, and that's -- that's it for
20 me for now. Thank you.

21 THE COURT: Mr. Davis?

22 ///

23

24

25

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CROSS-EXAMINATION

BY MR. DAVIS:

Q. Good afternoon. Just a few questions. You testified that you filed your Title IX complaint with the Department of Education a few months ago; is that correct?

A. Yes.

Q. And, to your knowledge, is that complaint still pending with the Department of Education?

A. I'm not sure.

Q. Okay. Have you heard that it was denied?

A. I have not.

Q. Have you filed any lawsuit directly against Baylor?

A. No.

MR. DAVIS: Thank you. That's all I have.

THE COURT: For the intervenors?

MR. SCHAERR: Yes, Your Honor.

CROSS-EXAMINATION

BY MR. SCHAERR:

Q. And hello, Ms. Penales. Thank you for taking the time to speak with us today. You're obviously very bright and articulate and would make a great lawyer if you choose that path.

I have just a few questions, and I hope you won't take any of them as denigrating in any way of the pain and distress that

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1 you have described for the Court today. Is that okay?

2 A. Absolutely.

3 Q. Okay. Now, despite the pain that you have experienced at
4 Baylor, am I correct that you have no information suggesting
5 that the Department of Education ever directed Baylor to enact
6 the policies that you object to?

7 A. No. But has the DOE yelled at Baylor for having these
8 policies in place? I feel like there should be some kind of
9 accountability for its universities.

10 Q. So your complaint, to the extent it involves the
11 Department of Education, it's that they failed to do something
12 that you think they should have done; is that correct?

13 A. Yes.

14 Q. Is that fair?

15 A. Yes.

16 Q. Okay. Are you aware of the Department ever directly
17 encouraging students or faculty, or others, to discriminate
18 against others of the LGBTQ community?

19 A. No.

20 Q. And are you also aware that the Department considers
21 Title IX to protect LGBTQ students from discrimination?

22 A. Yes. But not Baylor's Title IX.

23 Q. Okay. Now, if -- if your lawsuit or the lawsuit that
24 you're participating in were successful in eliminating the
25 religious exemptions applied to LGBTQ students, are you aware

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1 that Baylor would be free to retain its positons on marriage
2 and sexuality?

3 MR. SOUTHWICK: Objection. Speculation.

4 BY MR. SCHAERR: (Continuing):

5 Q. Well, what is your understanding of the effect of
6 abolishing Baylor's Title IX exemption?

7 MR. SOUTHWICK: Same objection. Calls for a legal
8 conclusion.

9 THE COURT: She may not know. Do you have any idea?

10 THE WITNESS: I have no idea.

11 THE COURT: Go ahead.

12 BY MR. SCHAERR: (Continuing):

13 Q. But if Baylor lost the ability to offer federal financial
14 assistance to its students, that would make it more difficult
15 for LGBTQ students and all other students who may want to
16 attend Baylor to do that. Is that -- is that correct?

17 A. It's already difficult for us.

18 Q. Okay.

19 A. Yeah.

20 Q. All right. Now, Ms. Penales, you knew at the time that
21 you entered Baylor that it was a Baptist school; right?

22 A. Right.

23 Q. And you obviously chose to attend; right?

24 A. Right.

25 Q. And you have been able to remain there or you have

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1 remained there for a couple of years now; right?

2 A. Right.

3 Q. And when you started school at Baylor, you understood that
4 Baylor had this Statement on Human Sexuality that we have
5 discussed before; right?

6 A. Right.

7 Q. And did you understand that Baylor considered that
8 statement to be grounded in the Bible?

9 MR. SOUTHWICK: Objection. Speculation.

10 THE WITNESS: Yes.

11 THE COURT: Overruled. She answered the question.

12 BY MR. SCHAERR: (Continuing):

13 Q. And you understood, did you not, that all Baylor students
14 were expected to live according -- to live in according -- I'm
15 sorry -- to live in accordance with that statement; correct?

16 A. Correct. But I also don't think that students should be
17 subjected to discrimination even if those policies are in
18 place.

19 Q. Okay. So I -- I gather from that and other comments that
20 you have made, that you disagree with some of Baylor's beliefs
21 about human sexuality. Is that fair?

22 A. Yes. Yes. I think the university can have a human
23 sexuality statement put in place but still protect its students
24 from discrimination.

25 Q. Okay. Well, let's look again at Baylor's statement. I

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1 think this is Plaintiffs' Exhibit 5. And let's -- let's look
2 at the -- at the second sentence, which says that Baylor,
3 quote, "affirms the biblical understanding of sexuality as a
4 gift from God."

5 Did I read that correctly?

6 A. Yes, you did.

7 Q. Okay. And Mr. Southwick also read portions of this to you
8 earlier, and he read the remainder of the paragraph which talks
9 about Christian churches across the ages and around the world
10 having affirmed purity and singleness and fidelity in marriage
11 between a man and a woman as the biblical norm.

12 You're familiar with that statement; right?

13 A. Very much so.

14 Q. And it goes on to say that temptations to deviate from
15 this norm include both heterosexual sex outside of marriage and
16 homosexual behavior; right?

17 A. Right.

18 Q. And you understand that that statement is also based on
19 Baylor's understanding of the Bible?

20 A. Yes.

21 Q. Okay. And do you agree, in whole or in part, with that
22 statement?

23 A. No. I think that if we're reading policy for policy, we
24 should also look at the commitment to diversity policy that
25 Baylor has where it says love thy neighbor are not just words.

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1 They're not just words; they are way of life. Baylor's policy
2 is confusing. So I understand why we're kind of reading it
3 sentence by sentence, but I don't agree.

4 Q. Okay. So which -- which portion of this policy do you
5 disagree with?

6 A. Well, essentially, Baylor is saying it's welcome to all
7 students in a safe and supportive environment. Bottom line,
8 it's not that way for all students because it's not for the
9 LGBTQ community. I can go as far as saying it's not that way
10 for minority students as well.

11 Also, the ability to discuss and learn about a variety of
12 issues, including those of human sexuality, we have had
13 multiple talks with Baylor leadership. Granted, the students
14 are receptive to these talks. It just seems like the Baylor
15 leadership isn't.

16 Great. They understand the Bible's norms. I agree with
17 that. The Bible could be translated to say that the norm is
18 between a man and a woman for marriage, but I don't think that
19 it can say homosexual behavior is not allowed when it also
20 states that heterosexual sex outside of marriage is not
21 allowed, when clearly some behavior that has been shown on
22 campus is indicative of heterosexual sex. There's a lot that
23 can be, you know, used.

24 Q. So you -- so it sounds like you disagree with Baylor when
25 they -- when they say that heterosexual sex outside of marriage

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1 and homosexual behavior should be avoided. Is that fair?

2 A. Yes.

3 Q. Okay. And do you think that Baylor is misunderstanding
4 the Bible when it says that?

5 A. I don't know how Baylor interprets the Bible.

6 MR. SOUTHWICK: Objection. This is harassing
7 Veronica.

8 THE COURT: The objection is sustained. Let's move
9 on. I don't know that this is helpful to what I have to
10 decide.

11 MR. SCHAERR: Okay.

12 BY MR. SCHAERR: (Continuing):

13 Q. Okay. Let's turn now to a document that has been marked
14 for identification as CCCU Exhibit 13, and if we could -- my
15 colleague, Josh, will share that on the screen.

16 Ms. Penales, can you read the title of that document?

17 A. Human Sexuality at Baylor University.

18 Q. Okay. And are you familiar with that document?

19 A. I don't think that I have -- oh, yes. Very much so.

20 Q. Okay. So let's look at the -- at the last few sentence --
21 sentences of the first paragraph, which says that Baylor
22 acknowledges the complexity of issues surrounding human
23 sexuality and desires to engage in this conversation with
24 humility, prayerfulness, and convicted civility.

25 Do you see that portion of the statement?

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1 A. Yes, sir.

2 Q. And then they go on to say, "We believe Baylor is in a
3 unique position to support our students, including those who
4 identify as LGBTQ, because of our Christian mission and the
5 significant campus-wide resources available." Is that -- is
6 that correct?

7 A. It's --

8 THE COURT REPORTER: I'm sorry. You froze. I didn't
9 get the answer.

10 THE COURT: She didn't get the answer to the last
11 question before this question.

12 THE WITNESS: Sorry.

13 THE COURT: So, Jill, maybe it's helpful --

14 THE WITNESS: I believe I answered that the document
15 does indeed say what the gentlemen read above.

16 MR. SCHAERR: Okay.

17 THE COURT: Thank you.

18 BY MR. SCHAERR: (Continuing):

19 Q. And so it's fair to say that according to this document
20 Baylor welcomes those who identify as LGBTQ; correct?

21 A. According to the document, yes; according to Baylor,
22 actually, absolutely not.

23 Q. Okay. And I assume you're aware that there's some
24 religious schools that would kick a student out merely for
25 identifying as LGBTQ; is that correct?

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1 A. Yes. Does that university still have the same exemption
2 as Baylor?

3 Q. And consistent with Baylor's guiding principles that we
4 have read, you have been allowed to remain at Baylor despite
5 identifying as LGBTQ; isn't that correct?

6 A. It is correct.

7 Q. And Baylor merely asked that while you're a student that
8 you refrain from violating its Statement on Human Sexuality.
9 Is that accurate?

10 A. I merely asked not to be discriminated against as a
11 student; but, yes, that would be accurate.

12 Q. Okay. And that's because, given it's Christian theology
13 or its understanding of Christian theology and its worldview,
14 it believes that the Statement on Human Sexuality reflects
15 biblical principles; right?

16 MR. SOUTHWICK: Objection. You keep asking her to be
17 a Baylor witness, but that's causing speculation.

18 MR. SCHAERR: I'm just asking her her understanding
19 of Baylor's position.

20 THE COURT: Go ahead and answer.

21 THE WITNESS: I do understand Baylor's position.

22 BY MR. SCHAERR: (Continuing):

23 Q. And you understand that it's based on Baylor's Christian
24 theology and worldview as they understand it; correct?

25 A. I will say I don't know how to answer that question

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1 because I don't understand Baylor's Christian worldview because
2 it's so hypocritical. It does -- it says one thing and it says
3 another, so --

4 Q. But you understand that their position is based on their
5 understanding of Christian theology; right?

6 A. Yes, but they don't have one Christian theology position.

7 THE COURT: Let's move on. It's not helpful to the
8 discussion, and it's not helpful to the decision-maker, and we
9 have been going since 9:00. It's a quarter to 12:00, and we
10 have a number of witnesses remaining.

11 MR. SCHAERR: Okay. I have no further questions,
12 Your Honor. Thank you.

13 THE WITNESS: Thank you.

14 THE COURT: You're welcome.

15 Redirect, Counsel?

16 MR. SOUTHWICK: Nothing from me, Your Honor. This is
17 Paul Southwick.

18 THE COURT: Thank you.

19 Thank you very much for your time and your testimony. I
20 believe you are excused.

21 And I'm happy to start another witness, and we'll go at
22 least 15, or so, minutes and get started.

23 MR. SOUTHWICK: All right. Thank you, Veronica.

24 THE WITNESS: Thank you.

25 MR. SOUTHWICK: Plaintiffs' next witness is -- we can

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1 go ahead and get started with. This is going to be one of our
2 expert witnesses. Dr. Ilan Meyer. And we can go ahead and get
3 started.

4 THE COURT: I kind of hate to start with your
5 expert -- you know, taking that expert's time and bifurcating
6 it -- because we'll need to take a lunch break. You don't have
7 another student witness that you can start with?

8 MR. SOUTHWICK: I -- I could check.

9 What I would propose is we could start with Dr. Meyer and
10 kind of get into his background and credentials and then we can
11 dive into more of the meat of it after lunch.

12 THE COURT: That's fine. Let's do that so we use the
13 time.

14 MR. SOUTHWICK: All right. Dr. Meyer, I believe
15 you're on, if you could start your video up.

16 THE COURT: If you would -- if he would start to
17 speak, he would -- and his video is on, he will emerge on my
18 screen, but right now I don't have anybody.

19 MR. SOUTHWICK: All right. Dr. Meyer, are you there?

20 Sorry, Your Honor. It says he's on. I don't think
21 anybody can see him. So we're going to give him a call and see
22 if he's having a tech issue here.

23 THE COURT: Sure.

24 MR. SCHAERR: Your Honor, if I could take a moment
25 before we get to Dr. Meyer. I neglected to move -- move for

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1 the admission of Exhibit 13. CCU Exhibit 13. I would like to
2 do that at this time.

3 THE COURT: Any objection?

4 Hearing none, it's received.

5 MR. SCHAERR: Thank you, Your Honor.

6 THE COURT: All right. You're here, but your video
7 and microphone are not connecting.

8 MR. SOUTHWICK: Just an update. We can see Dr. Meyer
9 on the list of participants, but we cannot hear you.

10 THE COURT: Looks like he's muted.

11 MR. SOUTHWICK: We see you, Dr. Meyer. We can't hear
12 you. You have to unmute your audio. That's it. Oh, I thought
13 I could --

14 THE COURT: He should pop up as a full screen, but
15 it's not happening.

16 MR. SOUTHWICK: We could have him dial in. We could
17 send him the dial-in information so he can call from his phone.

18 DR. MEYER: I can do that.

19 MR. SOUTHWICK: Oh, we can hear you now.

20 THE COURT: I can't hear him. So --

21 DR. MEYER: Can you hear me?

22 THE COURT: Now, a little bit, but not very well.

23 DR. MEYER: I don't know what else I can do on my
24 side.

25 THE COURT: Jill, are you able to hear?

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1 DR. MEYER: Do you want me to call in?

2 THE COURT REPORTER: Yes, I can, Your Honor.

3 THE COURT: It's a volume issue for me. I can hear
4 you if I listen carefully.

5 MR. DAVIS: This is Elliott Davis. When we dialed
6 in, it seems like the audio is better for the Court. That
7 might be a good course of action here.

8 DR. MEYER: I can try to dial in. I have the
9 information.

10 THE COURT: I think for the purposes of what we're
11 going to do on the gathering of the vitae and expertise, why
12 don't we just go ahead, and then maybe we can call in for the
13 afternoon portion.

14 MR. SOUTHWICK: All right.

15 DR. MEYER: Okay.

16 MR. SOUTHWICK: Okay. You sound a little bit better,
17 Dr. Meyer. That's good. Just speak as -- you know, speak up
18 as you can.

19 Plaintiffs are ready if you want to swear in the -- if the
20 Court would like to swear in the witness.

21 THE COURT: If he will speak again, he will move into
22 the picture. Could you say -- could you say something, please,
23 Dr. Meyer?

24 MR. SOUTHWICK: We just lost him.

25 THE COURT: Dr. Meyer, are you there?

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1 Now I don't have any sound.

2 MR. SOUTHWICK: Yeah, I don't see him.

3 THE COURT: I think this might be a message. Maybe
4 we should take our noon recess now and see if we can get IT to
5 work on it when they're not under the gun right now, and we
6 should be maybe up and running. Everything is kind of
7 resolved. So I think we should be able to make it work.

8 Why don't we come back at 1:00.

9 MR. SOUTHWICK: All right. Thank you, Your Honor.

10 THE COURT: Thank you. We're in recess.

11 (Lunch break taken.)

12 DEPUTY COURTROOM CLERK: Hi. This is Cathy.

13 Jill, are you there? And is everyone ready?

14 THE COURT REPORTER: I'm here, Cathy.

15 MR. SOUTHWICK: Paul Southwick for the plaintiffs. I
16 think plaintiffs are ready to go.

17 MR. DAVIS: Federal defendants are ready.

18 MR. SCHAERR: Intervenor CCCU is ready to go.

19 MR. LIPPELMANN: Intervenor religious schools are
20 also prepared.

21 DEPUTY COURTROOM CLERK: Great. Thank you.

22 THE COURT: Do we have everything worked out on the
23 technology end?

24 MR. SOUTHWICK: Yes, Your Honor. This is
25 Paul Southwick. We do.

Meyer - D

1 THE COURT: Great. All right. So call your witness.

2 MR. SOUTHWICK: All right. Plaintiffs' next witness
3 is Dr. Meyer.

4 THE COURT: Mr. Meyer, you have yet to appear on my
5 screen, so I -- there you are. There. As soon as you speak,
6 you will pop up, but you weren't speaking.

7 I'll ask you to raise your right hand.

8

9 DR. ILAN MEYER,
10 called as a witness in behalf of the Plaintiffs, being first
11 duly sworn, is examined and testified as follows:

12

13 THE WITNESS: I do.

14 THE COURT: Thank you very much. For the court
15 reporter, would you please state your full name and spell your
16 last.

17 THE WITNESS: Ilan Meyer, M-e-y-e-r.

18 THE COURT: Go ahead.

19

20 DIRECT EXAMINATION

21 BY MR. SOUTHWICK:

22 Q. Thank you, Dr. Meyer. I appreciate you being here today.
23 Do you understand that you are being called by plaintiffs as an
24 expert witness today?

25 A. I do.

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1 Q. All right. Before I ask the Court to formally qualify you
2 as an expert, I'm going to ask you a few questions about your
3 background.

4 Where are you currently employed and in what capacity?

5 A. I'm a distinguished senior scholar at UCLA Criminal Law
6 Williams Institute in Los Angeles, California.

7 Q. And can you --

8 In Los Angeles, California. Great.

9 Can you inform the Court or explain to the Court what the
10 Williams Institute is?

11 A. We're a research center that focuses on sexual orientation
12 and gender identity policy and law issues.

13 Q. And how long have you been at the Williams Institute?

14 A. Ten years.

15 Q. And prior to your time at the Williams Institute, were you
16 at Columbia University in New York City?

17 A. Yes. I was a professor at Columbia University in
18 sociomedical sciences.

19 Q. And is that also where you received your Ph.D.?

20 A. It is.

21 Q. And what is your Ph.D. in?

22 A. It's in sociomedical sciences, which is an
23 interdisciplinary program in public health and social science,
24 and my social science is social psychology. So it's a
25 combination of social science theories and information and

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1 public health, specifically bibliological methods of
2 investigation of population health.

3 Q. Great. And did you prepare a report in advance of today's
4 hearing?

5 A. I did.

6 MR. SOUTHWICK: All right. I have pulled up
7 Dr. Meyer's expert witness report on my screen here, and it's
8 at the end of plaintiffs' exhibit list. So I would just like
9 to formally introduce Dr. Meyer's report to be admitted as
10 Plaintiffs' Exhibit No. 8.

11 THE COURT: Any objections?

12 MR. DAVIS: The federal defendants object on hearsay
13 grounds, Your Honor.

14 THE COURT: Anyone else?

15 It'll be received, and the objection is overruled.

16 BY MR. SOUTHWICK: (Continuing):

17 Q. All right. Dr. Meyer, I pulled up Exhibit No. 8, which is
18 your expert report. You may also have a copy in front of you.
19 I'm going to go through some of this throughout the day, but
20 first I would like to just look at paragraph 6 of your report,
21 which talks about your area of study. A lot of us are not
22 familiar with this area of social epidemiology or social
23 science. So can you just explain a little bit more regarding
24 paragraph 6 and your particular area of expertise in this
25 field?

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1 A. Yes. So epidemiology is the study of diseases and
2 patterns and risk factors for such diseases, and social
3 epidemiology specifically looks at social conditions, social
4 arrangements, legal policy issues, and how they impact
5 population health. And by "population health," I mean to
6 differentiate it from clinical care, which is it's focusing on
7 individual patients.

8 Q. And your particular expertise in this area, is it with the
9 lesbian, gay, bisexual, and transgender community, otherwise
10 known as the LGBT community?

11 A. Yes.

12 Q. How long have you been studying or producing academic
13 research and literature on this topic?

14 A. Really my entire career. I started working on some of
15 those issues from my dissertation work, which was completed in
16 1992. And I have been working on these and other related
17 issues since then, including issues related to race, ethnicity,
18 gender, and sexual orientation.

19 Q. And have you published in this field?

20 A. Yes, I have.

21 Q. And approximately how many academic -- peer-reviewed
22 academic papers would you say that you have published in
23 this -- in this field? Just an approximate number.

24 A. I think about 120 or 130 published peer-reviewed journals
25 and maybe some more in the form of chapters and books.

Meyer - D

1 Q. All right. And you were retained by plaintiffs to provide
2 some particular testimony relating to today's proceeding; is
3 that true?

4 A. Correct.

5 Q. So I would like to refer you to paragraph 17 of your
6 report where it notes that you have been asked by counsel to
7 provide an opinion about the impact of social environment on
8 the health and well-being of LGBT people; in particular, young
9 people, like plaintiffs, who are at high schools and
10 educational institutions for higher education at the time of
11 incidents related to this litigation. Is that your
12 understanding of the scope of your testimony today?

13 A. It is.

14 MR. SOUTHWICK: So, Your Honor, I would like to offer
15 Dr. Meyer as plaintiffs' expert witness for the scope of the
16 testimony just described.

17 THE COURT: Hearing no objection, that's noted and
18 granted.

19 BY MR. SOUTHWICK: (Continuing):

20 Q. All right. Dr. Meyer, you've provided this report.
21 You've discussed some of the work that you have done in this
22 field, and now I would like to walk through parts of your
23 report.

24 Since we have limited time in today's proceedings, I'm not
25 going to go through each and every paragraph. You have

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1 provided a very detailed report and the Court and all counsel
2 have a copy of that. But I would like us to go ahead and start
3 a little bit on paragraphs -- starting at paragraph 28, and so
4 I will just give everyone a moment to get to this section.

5 And this is towards the beginning, where you discuss
6 homosexuality, sexual identity, and gender identity. We have
7 been using a lot of terms in the litigation. Sexual and gender
8 minorities or LGBTQ, sexual orientation, gender identity. Just
9 as we're getting started today, could you provide some
10 clarification to these terms, as you understand them, and
11 outline them in this section of your report?

12 A. Yes. So as I indicated, actually, in 29, sexual
13 orientation is defined in at least three ways: Sexual
14 behavior, attraction, and identity. The term "sexual
15 minorities" generally would reflect people who are -- have
16 interest in or have actually had behavior, meaning sex, or are
17 identified as LGB or some word that is similar to the -- not
18 similar, but is suggestive of the same concept of same-sex
19 interest. There are terms, such as "queer" and "pansexual,"
20 that would go under the same umbrella.

21 Homosexuality is, of course, an older term that refers to
22 a similar concept. Gender identity refers, again, to
23 individuals whose gender is different than their sex assigned
24 at birth. They can be transgender. They can be not identified
25 as transgender; meaning, a transgender woman who was assigned

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1 male at birth now identifies as a woman, not necessarily
2 transgender, but we would include a person like that in the
3 term "gender minority."

4 Q. Great. Thank you for those explanations.

5 I also want to turn to paragraph 31 in this section where
6 you talk about homosexuality being classified as a mental
7 disorder prior to 1973. I don't need you to go on extensively
8 about that, but can you explain what happened in 1973 with the
9 classification?

10 A. Well, prior to '73 there were a lot of studies and debates
11 within psychiatry, American psychiatry, that at the same time
12 were thinking about revising the classification system and,
13 among this research, was a new focus on homosexuality, which,
14 in the previous -- in the previous iteration of this manual,
15 homosexuality was classified as a mental disorder.

16 In 1973 it was removed from this classification so that
17 the next manual that was published after '73, in 1980, it was
18 removed and is considered now, both in the American and
19 worldwide medical and psychiatric profession, as a normal
20 expression of human sexuality.

21 Q. So is it fair to say that there's consensus among the
22 scientific community that homosexuality is no longer considered
23 a pathology or a deviancy but is, in fact, now a normal or
24 healthy variant of sexuality?

25 A. Yes. Definitely. For the past 20 to 50 -- 50 years,

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1 probably.

2 Q. And has there been an understanding -- was there a
3 significant change in the scientific literature in your field,
4 after 1973 in terms of analyzing the LGBT population?

5 A. Well, there were changes, including leading to 1973; and,
6 as I said, debates. But the research in this field has been
7 evolving and continues to evolve, yes.

8 Q. All right. And people can experience their sexual
9 orientation or they can come to an awareness of their sexual
10 orientation at different stages of their lives. And in
11 paragraph 34 you discuss how high school and college age, which
12 is the age of the young people -- most of the people who are
13 the plaintiffs in this case, most of them would fall within
14 that range. You explain that high school and college is a
15 particularly vulnerable time for LGBT people.

16 Could you explain a little bit further why that is?

17 A. Well, that has to do with the developmental tasks, as we
18 call them, of young people, which, at that age, involves kind
19 of figuring who you are, your identity; and this is, of course,
20 also a time where sexual feelings develop and many people begin
21 to identify as lesbian, gay, bisexual, or at least question
22 their heterosexual -- presumed heterosexual orientation because
23 most people presume heterosexual orientation until this is
24 beginning to be raised in their mind based on their experiences
25 as a question. So that's why that is a particularly important

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1 period.

2 Q. In the following paragraph, 35, you describe what I think
3 is commonly referred to as the coming -- coming-out process.

4 Could you discuss paragraph 35 a little bit?

5 A. Yes. It's consistent with what I just said. People begin
6 to maybe question. Sometimes it's more complicated and
7 difficult; sometimes less so. But it is a process that
8 psychologists describe as "coming out" which doesn't refer only
9 to telling people about your sexuality, which is part of it,
10 but it's really referring to coming to terms with it and -- and
11 really, ideally, living to accepting yourself as a gay,
12 bisexual, or lesbian person in a healthy way that would allow
13 to develop relationships and achieve life goals.

14 Q. And is it fair to say that for transgender or gender
15 nonconforming people that there's often a similar type of
16 coming-out process and that's what you describe generally in
17 paragraph 36?

18 A. Yes. It's a little different but similar in its
19 trajectory, where people who are transgender describe that it's
20 something they always knew but maybe were afraid to confront
21 until a particular point in time; and, by the way, those times
22 are changing with younger generations kind of moving earlier in
23 their lifespan, compared to older generations. But it's a
24 similar process of needing to discover oneself and accept
25 oneself.

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1 Q. So it sounds like it's fair to say that process is
2 happening earlier than in past generations. Would you --

3 A. Yes.

4 Q. -- would you also say -- oh, go ahead.

5 A. Sorry. Go ahead.

6 Q. Would you also say that younger people are coming out as
7 LGBT in greater numbers, as well, than in prior generations?

8 A. Yes, that is correct.

9 Q. Looking at paragraph 37, you talk about how the coming
10 process out -- the coming-out process -- excuse me -- how that
11 can look very different, depending on whether you are in a
12 supportive environment or not, whether that environment is your
13 home life, your religious community, or wherever you find
14 yourself, and you note in 37 that in contrast a rejecting
15 environment, such as family members or religious institutions,
16 can disrupt or delay the coming-out process and bring about
17 adverse mental and physical health outcomes and suicide
18 ideation and attempts.

19 Could you talk about that a little bit more?

20 A. Yes. So what brings about the adverse health outcomes is
21 the rejection. And, you know, as I was saying before, during
22 the coming-out period, the person has been negotiating their
23 own feelings, their own sense of who they are, kind of
24 recognition that they might be a sexual minority. They're gay
25 or lesbian or bisexual or queer, or whatever terms they use,

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1 and if they are in an environment where that is rejected,
2 obviously that makes the process of self-acceptance more
3 difficult.

4 I would say that in religious -- what I would call
5 nonaffirming religious organizations, if the person is a member
6 of such a religion or the family is, that makes it even harder
7 for both the person and the family, I would say, to accept a
8 person who is gay or bisexual or lesbian and to provide to them
9 a supportive environment and supportive messages that would
10 counteract what they have learned probably for their entire
11 life about homosexuality.

12 Q. And when you -- when you discuss here the family
13 structures as well as religious institutions, would it also be
14 accurate to say that school environments, a religious school or
15 religious college or university environment that is a rejecting
16 or nonaffirming environment, would also -- could also disrupt
17 or delay the coming-out process?

18 A. Yes. Absolutely.

19 Again, high school and college. College, in particular,
20 has a kind of different space in this process because that's
21 often the time where young people leave their home, maybe for
22 the first time. Maybe they have new influences on their lives
23 and maybe, to some extent, more freedom to explore their
24 nonconforming gender or sexual identities. So high school, I
25 think, is a little more difficult. Again, it's much more

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1 difficult, depending on their home environment. It could be
2 more welcoming to people who are in a more accepting high
3 school or family but very difficult if you are not in -- if
4 you're in a rejecting family or high school that doesn't have
5 any opportunities for affirmation or for even learning about
6 what it means to be lesbian, gay, bisexual, or transgender.

7 Q. Thank you, Dr. Meyer.

8 I want to turn to the next section of your report, which
9 is entitled, "Minority Stress and the Health of LGBT People,"
10 and the first section, A, is "Stigma, prejudice, and
11 discrimination against LGBT people have been widespread."

12 For people, again, who are not familiar with the
13 literature in this area, could you give a general explanation
14 of your understanding of minority stress?

15 A. Yeah. Well, I mean, this section first discusses the
16 prevalence of an antigay, which we call homophobia or
17 anti-transgender, which is transphobia, feelings and ideologies
18 in many cultures and definitely in the United States, and that
19 is kind of the backdrop against which people who are LGBT have
20 to find ways to express themselves.

21 So that is just how -- the level of stigma and prejudice
22 that is -- differs by location, society, family; but it has
23 been, as I said, existing for many decades.

24 As far as minority stress, this is my first theoretical
25 work and then empirical work that comes to explain how that

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1 environment can impact the health and well-being of LGBT
2 people. As I said before, this is the kind of social
3 epidemiological aspect of it where I've taken what we know
4 about disease causation -- for example, distress process is not
5 something unique, obviously, to LGBT people, but I have
6 examined it within the context of social processes, laws,
7 policies, and environments, and how that environment translates
8 into the experience of specific stressors in the lives of LGBT
9 people.

10 Q. Thank you for walking us through that.

11 Let's go ahead and take a look at some of these paragraphs
12 in this section. You mentioned 38, which talks about the
13 decades of stigma, and the second sentence in paragraph 38
14 talks about how LGBT and heterosexual cisgender people
15 internalize and sometimes even propagate stigma and stereotypes
16 about LGBT people.

17 Can you -- can you discuss what you mean by that?

18 A. Well, just as I said, everybody in society is socialized
19 to varying degrees in the sense that heterosexuality is the
20 norm, is the accepted and preferred way, and so that
21 socialization applies to both straight cisgender and gay or
22 LGBT people.

23 If you take, you know, a more concrete example -- if you
24 have a family who attends church every Sunday or more than
25 that, if one or more of them are LGBT, they all hear the same

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1 message, and that message has been for many years and continues
2 to be in many places that of rejection, and the reason, as I
3 say in my report, and, you know, describing it as obscene, and
4 also attaching to it all kinds of stereotypes, for example,
5 that if you are LGBT you might be not able to form
6 relationships to have intimacy, to -- so you will be lonely as
7 an adult. You will never have children. You will never have a
8 family. You know, there has been a lot of stereotypes related
9 to the AIDS epidemic, which perhaps, maybe, is beginning to
10 subside. I am not sure. But that if you're a boy and you --
11 you talk about being gay, the immediate stereotype would be,
12 "Well, you could die from AIDS or you might -- or you will die
13 from AIDS."

14 So this is the way that stereotypes and stigma is attached
15 to the life of the person who is coming out or is exploring
16 their sexual or gender identity.

17 Q. And so for a student, like the plaintiffs, who are, you
18 know, in the 18- to 21-year-old range, who are going to live on
19 a residential campus, and if that campus maintains policies
20 that say things such as homosexual relationships are forbidden,
21 homosexual behavior is forbidden, being transgender is
22 forbidden, I mean, if there are policies and practices in place
23 at those kinds of institutions, is it fair to say that that
24 would be part of this socialization that you are referring to
25 that can impact both the LGBT students on that campus but also

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1 the heterosexual and cisgender students who would be receiving
2 that same message of stigma? Is that fair?

3 A. That's correct. The only thing I would add is that that
4 would be a -- a confirmation of what they have heard already
5 before they got to the school. So that's not the first time
6 this message is being relayed to them because that is a very,
7 as I said, prevalent message, and I would tend to think that
8 especially in nonaffirming religions you would hear that
9 message a lot.

10 So before they even attended the school, they came with
11 that understanding, and that is being reconfirmed to them by
12 the school.

13 Q. On paragraph 39 you talk about how this socialization
14 process has led to widespread prejudice and stigma against the
15 LGBT community and then you break the stigma out into
16 structural, interpersonal, and personal.

17 So I would like you to just focus on the structural
18 stigma, and you provided a definition there in paragraph 39 as
19 a form of -- as a form of symbolic violence in which structures
20 such as communities, institutions, or governments perpetrate
21 violence through the laws, policies, and community mores that
22 restrict and forcibly reshape transgender or LGB individuals.

23 Could you unpack that a little bit more for us?

24 A. So it's basically saying that structures, such as laws and
25 policies, can determine for an individual their experiences in

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1 society. So to the extent that we know that LGBT people are
2 exposed -- are victimized more often than cisgender
3 heterosexual people, to the extent that the institution does
4 not protect them, then there is a connection between the
5 structural and the interpersonal or the personal experience of
6 the person.

7 So they are all related, of course; but the point here is
8 that you cannot just go to one person who is perpetrating some
9 kind of act and think that that started and ended with that
10 person, but that person was also embedded in a larger system,
11 that person was socialized with homophobia and transphobia.
12 They were socialized that it's okay maybe to attack LGBT people
13 and that maybe it's even just, et cetera. So there's a
14 relationship between the structural, interpersonal, and the
15 individual experience.

16 Q. And would it be fair to say that structural stigma in the
17 form of institutional policies, such as policies at colleges
18 and universities or through the government, either by its laws
19 or policies, that institutions and governments can have the
20 ability to reinforce such stigmas or stereotypes of LGBT
21 people?

22 A. Yes, that is exactly what it means.

23 Q. All right. And on paragraph 41 you say that this process
24 of socialization and the stigma that we have been discussing
25 has had many damaging effects for LGBT people, and I think you

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1 described some of them. Could you kind of list for the Court
2 and for all of us some of the negative impacts of this
3 prejudice and stigma for LGBT people?

4 A. Well, I listed two examples here, but I list more of them
5 in the preceding sections; but, again, if people are socialized
6 to think that LGBT people are evil or sinful, are not to be
7 accepted, that would explain an increase in violent attacks
8 against them, and we actually see that in national statistics
9 of violent victimizations where LGBT people are much more
10 likely to be assaulted than cisgender heterosexual. So that's
11 just one way that this is manifested.

12 Q. So I would like to turn to the part of your report now
13 which discusses religion as a source of structural stigma. And
14 before we get fully into this, I believe your report
15 distinguishes between affirming religions and nonaffirming
16 religions. So can you discuss that, in general, and how that
17 informs your opinions here about religion as a source of
18 structural stigma?

19 A. Yeah. Well, I mean, we are very aware in public health
20 that religion can have a very positive impact on the health of
21 individuals who are a part of -- part of the religion. In
22 many, many ways it can have a positive impact; and, therefore
23 when we think about religion in the context of LGBT people, we
24 really think about accepting versus not accepting in the same
25 way I was talking about families or institutions that have

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1 rules and regulations that are supportive and affirmative --
2 and affirming versus rejecting.

3 In the same way, affirming religions are religions that
4 provide accepting positive messages to LGBT people and
5 religions that are nonaffirming are religions that I would say
6 probably view homosexuality as a sin and LGBT people as sinners
7 and, therefore, are obviously rejecting of their sexual
8 orientation and gender identity.

9 Q. And is it your opinion that these nonaffirming religious
10 viewpoints on homosexuality in the United States had an impact
11 on the development of the legal system in the United States, in
12 terms of criminalizing sodomy and other types of criminal and
13 civil laws?

14 A. Well, this is based on historical analysis. This is
15 really not my research, but this is more like a background
16 from -- from work that I have read about how both in the
17 sciences and the law religion has a huge impact, obviously,
18 beginning in the 14th, 15th Century in articulating the place
19 and how homosexuality is to be viewed, and that's been
20 incorporated into law through the common law in European
21 countries and in colonial countries, such as in Africa and some
22 Asian countries; and it also has been incorporated into
23 medicine, to be honest, as original -- as medicine was
24 developed, there was not the huge distance between medicine and
25 religion and some ideologies were transferred into medicine and

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1 into current thinking, perhaps.

2 Q. On paragraph 45, you go into this a little bit further,
3 and in a second sentence of 45 you state that nonaffirming
4 religions send to their LGBT congregants a clear message that
5 they are sinners, that they cannot live a productive and happy
6 life as members of the community unless they reject their own
7 sexual and gender identities.

8 And, Dr. Meyer, would this be true whether the religious
9 community is a church or a -- could it also be true of a
10 religious school or a religious college environment? Would
11 that be fair to say?

12 A. Absolutely, yes.

13 Q. And then you end the paragraph by saying, "The authority
14 of religion and religious figures as leaders of moral and
15 ethical life can have a devastating effect on LGBT members who
16 are rejected for who they are."

17 Could you say a little bit more about the effect?

18 A. Yeah. Well, again, it has to do with being socialized and
19 growing up in a religion with a lot of positive aspects to many
20 people and positive memories and, I guess, adoration of the
21 leaders of the church or if it's a school of professors,
22 et cetera, and then to find that those people that you look up
23 to and their religion that you viewed yourself as a part of and
24 a member of and got a lot of emotional rewards for that, that
25 that family is rejecting you, it's devastating and difficult

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1 for LGBT religious people.

2 Q. So, Dr. Meyer, in light of what you have been talking
3 about, for a young person, let's say one of the plaintiffs or
4 any number of the plaintiffs, actually, if they grow up in
5 these kind of nonaffirming religious environments and, let's
6 say, they remain closeted through high school and they find
7 themselves in a similar nonaffirming religious college
8 environment but for the first time are living on their own, are
9 starting to explore their sexuality, finding other people,
10 other students who are also identifying as LGBT or somewhere on
11 that spectrum, would you -- would you say that for a student in
12 that kind of an environment, would it be healthy -- would it be
13 healthy for a student in that kind of environment to remain
14 closeted about their sexual orientation or -- let me -- let me
15 ask -- let me ask it a different way.

16 I believe you have already testified that there are
17 students who grow up in these religious environments and who
18 are closeted as kids and then may come to college and for the
19 first time start exploring their sexuality. Is that accurate?

20 A. Yeah.

21 Q. And a student who does that, who is doing that kind of
22 exploration in the context of a nonaffirming religious college,
23 where they could be punished either merely for coming out or be
24 punished because of their relationships or their displays of
25 their LGBT identity, would you expect that student to

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1 experience some of these forms of stigma or negative effects
2 that you would be talking about?

3 A. Yes. Absolutely. I think I talk about it in a letter in
4 the report. I don't know if you are going to want to get to
5 that, but there are serious consequences to concealing your
6 sexual orientation and gender identity for LGBT people; that
7 is, on one hand, protecting them from some harm but, on the
8 other hand, exposes them to a lot of stress and distress.

9 Q. Thank you for forecasting that. We will look at that in a
10 little bit. Momentarily.

11 I would like to look a little bit further on in -- let's
12 see here. I would like to go down to paragraph 54. And
13 paragraph 54 is the start of a section of your report about
14 specific minority stress processes. And you identify four
15 pathways: A, B, C, and D.

16 Could you give us a brief summary or description of each
17 of these, starting with A? Chronic and acute prejudice events
18 and conditions.

19 A. Yes. So as I said before, the minority stress theory
20 model explains how a social environment is translated into the
21 experience of stress for the person, and those are four ways.
22 There's an additional one at the bottom of this paragraph
23 referring to gender.

24 So these four ways include experiences of what we call in
25 stress research life events, which are everything that

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1 happened, like being attacked, a victim of violence. They
2 include acute and chronic conditions. So an acute condition
3 would be such an attack; a chronic condition can be anything
4 that is prolonged. Some -- some people, if, in fact, reported
5 a chronic bullying in school, that happens over time, months at
6 a time, and then -- so this is the kind of life events,
7 tradition of life -- of stress research.

8 Then there are -- the three other ones, I think, that have
9 to do with the impact of the environment on the person;
10 psychology, if you will. So knowing that you could be attacked
11 if you walk down the street with a same-sex partner or if you
12 are seen as a gender minority in any kind of obvious way that
13 other people might see, this knowledge would lead to stress in
14 the sense of needing to be vigilant in your walking down the
15 street.

16 But this vigilance is itself very stressful. In fact,
17 it's kind of the very definition of stress. It's the flight --
18 fight-or-flight response, as many people are familiar with
19 that, that creates a lot of physiological changes in the body.
20 And for LGBT people that is a very chronic condition of having
21 to be watchful for potential harm, potential rejection,
22 ridiculing. So that's the expectations.

23 Concealing, as we just discussed, is what many people have
24 to do or they feel that they have to do in order to protect
25 themselves. But that has many, many negative implications that

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1 I can explain more now, but I do list them later if you're
2 going to go down there.

3 And then internalization is really, in some ways, the most
4 difficult part because that is where the social environment, in
5 a sense, inhabits the person. Like, the person has accepted
6 all the negative portrayals of what it is like to be an LGBT
7 person. And now this young kid or college student -- you know,
8 high school or college student internalizes all of this
9 throughout their life, and now they direct this to themselves.

10 So I might be gay, i.e., I might be lonely; I might be
11 rejected; I might go to hell because that is what I have heard
12 in church. That's what I've heard in my family; that's what
13 I've heard in my school. So the internalization is kind of a
14 very insidious stressor.

15 And as far as gender -- transgender people, another type
16 of stressor is gender affirmation, or rather gender
17 nonaffirmation, and that is when people purposefully --
18 sometimes not purposefully, but I would think especially
19 purposefully refuse to use the correct gender, pronouns, refuse
20 to refer to the correct name of the person that might be
21 different than the name that they were on their birth
22 certificate, things like that. So those are the, I would say,
23 five general groups of processes.

24 Q. I wanted to hone in, just a little bit, on the
25 conditions -- or, excuse me, the processes B and C.

Meyer - D

1 In B you were talking about the vigilance required by the
2 expectation of rejection or the expectation of punishment or
3 violence and then also the concealing or hiding of one's LGBT
4 identity.

5 As you were, you know, reviewing the complaint, you
6 probably read a lot of these kinds of experiences from the
7 plaintiffs.

8 Would you expect LGBT young people, like the plaintiffs,
9 who are living in these educational environments where their
10 identities and relationships are regulated, are penalized, and
11 are looked down upon, would you expect those students to be
12 exhibiting signs of vigilance and of needing at times to
13 conceal or hide their identity for their own protection?

14 A. Yeah. I would imagine that that is a common experience.
15 It is not uncommon for LGBT people in nonreligious
16 institutions. So, again, it could vary by where you are and
17 when you are there, but it is a pretty common experience for
18 LGBT people to feel that they need to hide in order to protect
19 themselves.

20 Q. Would you agree that these stressors -- the vigilance or
21 the concealing, internalization, and even chronic and acute
22 prejudice -- would you agree that the more affirming and safe
23 of an environment that the LGBT person is in, the less these
24 stressors are going to be a problem for them?

25 A. Yes. Of course.

Meyer - D

1 Q. So I would like to -- I'm going to move down in your
2 report a bit here to paragraph 62, and paragraph 62 is still
3 under the Prejudicial Events and Conditions section.

4 Paragraph 62 talks about the symbolic value of prejudice
5 regarding stressful events. And so elsewhere in your report
6 you say that everyone undergoes stressful events; right?
7 People lose their jobs; people get sick. Sometimes you don't
8 get admitted into the college you wanted to go to, and that can
9 be a stressful event. However, your -- I believe that your
10 report on paragraph 62 talks about how that kind of a stressful
11 event takes on new and greater symbolic meaning when the basis
12 of the rejection or the -- you know, the negative event is
13 rooted in prejudice based on sexual orientation and gender
14 identity.

15 So earlier we had a plaintiff, Alex Duron, testify about
16 having the admission to his graduate nursing degree program
17 rescinded from Union University because of his sexual
18 orientation and how that devastated him.

19 And so is paragraph 62, in the symbolic -- the symbolic
20 value of a stressful event based on prejudice, would you say
21 that it's fair to say that that example of someone having their
22 admission rescinded and -- anyone having your admission
23 rescinded to a graduate program is stressful, but it takes on
24 added meaning and added impact because it's based on prejudice?

25 A. Yes. Absolutely. And, in this case, if you -- the

Meyer - D

1 example that you gave me was a pretty major event, what we
2 would call a rejection from a school; but this is even true for
3 what sometimes people call minor or micro events where the --
4 the meaning of the event is that you are being rejected because
5 you're saying because you are homosexual, because there's no
6 room for people like you in the world, and that becomes --
7 almost overwhelms the actual event.

8 So there's kind of two aspects to understanding the event.
9 There is, in fact, the devastation of harm or hurt that comes
10 from what actually happened, and that is more pronounced
11 because of what it means. It means "My society is rejecting
12 who I am, and in the -- it's who I am in ways that I cannot
13 change it." You know, again, it's a very unique experience
14 with people who are stigmatized.

15 As I said, it could even be a more minor type of event
16 that would -- because of the same reason, because of the
17 symbolic meaning behind it, because of the message behind it,
18 and because of the way the message behind it connects with
19 messages you've heard throughout your life. You have heard it
20 in church; you have heard it from your parents; you have heard
21 it from your teachers, from movies and newspaper articles, or
22 whatever -- everything that -- what we refer to as a
23 socialization experience that I talked about before, and this
24 is just like a confirmation and a continued assault based on
25 who you are that you cannot change.

Meyer - D

1 Q. And would you agree that this kind of extra symbolic --
2 this prejudice that you can feel or this symbolic exclusion
3 grounded in prejudice, that can come from -- it could come from
4 an employer, it could come from an educational institution, and
5 it could also come from the government's action itself?

6 A. Absolutely.

7 And I would say that when it comes from people in
8 authority, like you mentioned earlier -- religious leaders,
9 professors, and certainly governmental actions -- it has a
10 greater force of power because you're kind of alone against the
11 world. It's different when it's a friend or a peer that says
12 something that is rejecting than when your government says
13 something that is rejecting. There's obviously a lot more
14 power to the government action than to a peer that you can
15 dismiss easily -- or not easily but could potentially dismiss
16 more easily.

17 Q. All right. I would like to draw your attention next to
18 paragraph 65. This was under the heading of "Expectations of
19 Rejection and Discrimination" and talking about vigilance again
20 here.

21 So what I want to ask is in the context of the student
22 experiences in this case, where LGBT young people are
23 experiencing institutional discrimination from their school,
24 they have also had a lot of the personal internalized
25 homophobia, messages from family, and would -- would you agree

Meyer - D

1 that if they are at an institution where there is no
2 nondiscrimination protection based on -- for sexual orientation
3 or gender identity, and beyond not having any nondiscrimination
4 protection, there are actually affirmative policies that can
5 punish your identity or your behaviors and, beyond that, the
6 government office that is meant to protect you -- in this case,
7 the Office of Civil Rights -- has also not ever come in to
8 protect you and is, in fact, giving permission to the school to
9 carry out the discriminatory acts, would you agree that in that
10 kind of environment the LGBT young people are going to need to
11 be especially vigilant and will -- and that this kind of a
12 factor will be more strongly at play in their lives?

13 A. Yes.

14 Q. All right. I would like to go to paragraph 69, which is
15 under "Concealing Stigmatizing Identity," and you did touch on
16 this elsewhere, and so I -- I don't want to go too much into
17 it. I actually want to go to 71 here, though, because I think
18 you raised something I would like you to discuss, and you
19 discussed how concealing your identity can itself be a
20 significant stressor, and I think you said that you might have
21 some more to say about this, and I believe this is in -- where
22 in the report you do, and you say there are three main reasons
23 why. Could you -- could you describe those for us, please.

24 A. Yes. I -- well, what I identified was three processes
25 that make concealing hard. First of all, if you are concealing

Meyer - D

1 something that is true about yourself, that is not an easy
2 task, and, you know, if -- especially in an environment where
3 you live with people and you see them every day, such as a
4 school or work, the research has shown that even in a --
5 cognitively, this is just difficult to keep straight in your
6 mind, so to speak, in the sense of what did you tell this
7 person or that person? And when people say, "What did you do
8 this weekend?" and, "Who did you go with?" and, "Do you have a
9 girlfriend or boyfriend?" and gay people have used pronouns to
10 deceive that it was a same-sex partner, let's say, this is all
11 difficult just on the cognitive level. That can be very
12 stressful. You may be mixed up, confused; say something to one
13 thing and not anything to another. Lying is not easy -- you
14 know, being a good liar is not easy.

15 The second part is that there's been a lot of research in
16 psychology and health psychology about what is called expressed
17 emotion, and there's -- there's benefit, it turns out, for
18 people to express honestly who they are, to have a sense of
19 their experience being valid by the way of expressing it and by
20 honestly sharing with others emotions and experiences; and,
21 obviously, by definition, concealing deprives you of that.

22 And third, and maybe this really connects with some other
23 aspect of the minority stress process, but concealing prevents
24 you from connecting with others who are LGBT, from other
25 organizations that provide services for LGBT people, for

Meyer - D

1 messages that are more positive that would counteract the
2 negative messages that you may be receiving or may have
3 received throughout your life.

4 So, you know, by connecting to LGBT media and LGBT movies,
5 LGBT literature, you might see different portrayals of what
6 it's like to be LGBT that are not necessarily idolized but are
7 more honest and ring more true to you and are not just negative
8 and not just stigmatizing.

9 And you really -- part of concealing is that you can't
10 have any indications that -- you know, you can't even have a
11 book in your dorm room that is clearly of a gay interest if
12 you're trying to hide yourself. Maybe if you are straight, you
13 might be able to read it; but if you are gay and you are hiding
14 it, you would never get this book to be next to you.

15 And so there are many, many ways in which concealing
16 deprives LGBT people of -- of the good way of living and of
17 having a well-balanced life.

18 Q. Thank you, Dr. Meyer. And I'm almost finished with my
19 direct questioning, but I do want to point to the last two
20 paragraphs I want to go over with you. The first one is
21 paragraph 82, and this is where you make some conclusions about
22 stigma enacted in institutional, interpersonal, and
23 internalized fears, and this is where you make some statements
24 and conclusions that are highly specific and relevant to the
25 case, and so I want to ask you about some of these.

Meyer - D

1 In paragraph 82 you -- you talk about how a young
2 religious person might find themselves at one of these schools
3 and why -- you know, why they might end up there and what it's
4 like. And about halfway through paragraph 82 there's a
5 sentence that starts, "Once at the school, rather than finding
6 support, they found derision and rejection from the religious
7 authorities they relied on for guidance and comfort. When they
8 tried to seek help through an appeal to the Department of
9 Education, they discovered that the United States Department of
10 Education sided with the rejecting institution by exempting the
11 institution from Title IX."

12 So for this part, Dr. Meyer, we're talking about the
13 letters or the assurances of exemption that the Department of
14 Education has been issuing to these religious educational
15 institutions; is that right?

16 A. Yes.

17 Q. And then you go on and you say, "The plaintiffs in this
18 case experienced stigma enacted by religious institutions in
19 both institutional and interpersonal actions. If they sought
20 help, their pleas were ignored. Stigma was given a seal of
21 approval by the United States Department of Education further
22 enacting homophobia and transphobia. The young plaintiffs
23 found themselves alone against powerful institutions, with
24 their country supporting the actions of the offending
25 educational institution."

Meyer - D

1 I just want to ask you a little bit about this. You made
2 a statement in here about how the Department of Education has
3 given its seal of approval to these stigmas and injuries.

4 Could you talk a little bit about what you mean by that in the
5 context of, you know, the minority stress and the stigma that
6 we have been talking about today?

7 A. Well, again, I think it's the role that the United States
8 Government has as -- kind of as a guiding authority in cases in
9 our lives, in general; and you know, if you are wronged and you
10 turn to somebody to try to help you and that someone says, "No,
11 I don't -- I have nothing to offer here," you would feel
12 betrayed, I think. And the fact that it is an authoritative
13 institution, whether in the school or in the Department of
14 Health, I think that's doubly difficult.

15 If I might say, you know, I mentioned at the beginning how
16 people get to those institutions, and I think it's -- it's
17 important to note that people who go there go there because
18 they have a lot of positive associations with religion, and
19 they want their community. You know, I've interviewed, not
20 necessarily individually, personally, but through research,
21 many people who are religious, and they are very adamant
22 about -- they want to be accepted by their religion. They
23 don't want to be -- they don't want to go away from religion,
24 and I think that's something that is often missed. I know I
25 have presented papers, and they go, "Why don't they just

Meyer - D

1 leave?" I think it's easier said for people who are not part
2 of a religion or part of a group that they cherish.

3 So when they go in, I imagine, as young people, it may be
4 against all odds, but they still wish to be accepted, and I
5 think that's why the damage is even worse when you're expecting
6 that or when you hope for that, at least, and it doesn't
7 happen.

8 Q. Right. So there's that -- that hunger for acceptance from
9 your religious community, from your school or college; and
10 when, instead of acceptance, you get rejection and then you
11 also get rejection or showed the door from the government, your
12 ultimate conclusion here is that that can lead to adverse
13 health outcomes for LGBT people. And I believe that you
14 described some of those elsewhere in the paper.

15 The last bit that I want to ask you about is on
16 paragraph 85, and this is also about health outcomes. And it
17 looks to me that based on this paragraph, 85, that where the
18 government has provided nondiscrimination protections it has
19 improved the mental health outcomes for LGBTQ people. Is that
20 fair to say? And could you just say a little bit more about
21 that?

22 A. Yeah, definitely. I mean, there are several studies that
23 look at the general issue. We refer to them as ecological
24 studies. So they don't look specifically at what happened to
25 each individual in this sample, let's say, in the study, but

Meyer - D

1 they look at differences between people based on county or
2 state or even nation -- there have been studies in Europe. And
3 what they show overall is that where there are protections
4 there is a protective -- as we call it in public health,
5 protective effect on the health. In other words, where you
6 have legal recognition and protections, there is associated
7 with it an improvement in the health outcomes of LGBT people.

8 MR. SOUTHWICK: Well, thank you, Dr. Meyer. I don't
9 have any further direct questions. But some of the lawyers for
10 the other parties may have some questions for you, and I may do
11 some follow-up after they're done, depending on how it goes,
12 but thank you for your testimony today.

13 THE WITNESS: You're welcome.

14 THE COURT: Before we begin and I call on Mr. Davis
15 for the government, I would ask that you not go to the podium,
16 Mr. Davis, and you ask your questions from the seated position
17 where we have good mic coverage. We were having too much
18 difficulty having you at the podium. So if you would please
19 remain seated, that would be appreciated by the court reporter
20 and by all of us listening.

21 Go ahead.

22 Did we lose people?

23 We don't any sound for you, Mr. Davis. No sound from the
24 DOJ.

25 MR. DAVIS: This is Elliott Davis. Can you hear me

Meyer - X

1 now?

2 THE COURT: Yes. Thank you.

3 MR. DAVIS: I apologize. Our conference line went
4 out, apparently.

5 THE COURT: Not a problem. Proceed.

6 MR. DAVIS: Am I okay to proceed?

7 THE COURT: Go ahead.

8
9 CROSS-EXAMINATION

10 BY MR. DAVIS:

11 Q. Good afternoon, Dr. Meyer. I just have a few questions
12 for you.

13 A. Good afternoon.

14 Q. In paragraph 18 of your report, you state, quote, "I have
15 not personally met with plaintiffs or evaluated plaintiffs'
16 claims regarding their experiences in school." Is that
17 correct?

18 A. Yes.

19 Q. And then you go on to state, quote, "My knowledge of this
20 case was gained from reading one document provided to me by
21 counsel."

22 Is that correct?

23 A. Yes.

24 Q. And the one document that is the source of your knowledge
25 about this case is the first amended complaint; is that right?

Meyer - X

1 A. Yes. I would amend that I received another document
2 yesterday, but it's -- at the time of writing this, it was
3 correct.

4 Q. What document did you receive yesterday?

5 A. I received the report of Dr. Mark Regnerus.

6 Q. Okay. So apart from that report and the first amended
7 complaint, that comprises your knowledge of this case. Is that
8 fair to say?

9 A. Correct.

10 Q. Are you aware that the first amended complaint that you
11 reviewed predates all of plaintiffs' Title IX complaints in
12 this case?

13 A. I -- no.

14 Q. Okay. Are you aware that all but one of plaintiffs'
15 Title IX complaints are still being evaluated by the Department
16 of Education?

17 A. No.

18 Q. And are you aware that the one Title IX complaint that was
19 dismissed was dismissed for reasons other than the religious
20 exemption?

21 A. No.

22 MR. DAVIS: Okay. No further questions. Thank you.

23 THE COURT: For the intervenors? Do you have
24 questions?

25 MR. SCHAERR: Yes, Your Honor.

Meyer - X

CROSS-EXAMINATION

BY MR. SCHAERR:

Q. Good afternoon, Doctor. I'm Gene Schaerr. I'm representing Council for Christian Colleges and Universities. Thank you for being with us today.

I would like to begin by showing you what has been marked for identification as CCCU Exhibit 20. I'll have my colleague bring it up on the screen for us.

Do you recognize this article?

A. Yes, sir.

Q. Okay. Can you identify it by reading the name of the article and its lead author?

A. Yes. It's an article that I published this year. It's called -- it's titled, "Minority stress, distress, and suicide attempts in three cohorts of sexual minority adults: A U.S. probability sample."

Q. Did you prepare this study as part of a broader study called Generations?

A. Yes, sir.

Q. Am I correct that in this study you did not consider religious colleges or other religious organizations; right?

A. Correct.

Q. In this study, is it fair to say that you divided LGBTQ people into three cohorts?

A. More precisely, they were LGBQ, you can say. There were

Meyer - X

1 no transgender people here; but, yes, you're correct.

2 Q. You call these cohorts, the Pride Group, defined as anyone
3 born between 1956 and '63. You had another group called the
4 Visibility Group, consisting of people born between 1974 and
5 1981. And then you had a final group called the Equality Group
6 defined as anybody born between 1990 and 1997.

7 Is that how you broke down this group of people?

8 A. Yes.

9 Q. Okay. And the last cohort, the Equality Group, is roughly
10 the group that is currently either in college or is recently
11 graduated. Is that fair?

12 A. Yes.

13 Q. So the members of that group were still largely children
14 when the Supreme Court struck down anti-sodomy laws in 2003;
15 correct?

16 A. Yes.

17 Q. And at the oldest, the people in this group were about 25
18 years old when the Supreme Court found a right to same-sex
19 marriage in 2015?

20 A. Yes.

21 Q. All right. Now, let's turn to table 3 on page 10. Just
22 look at that for a moment.

23 Is it fair to say that your research found that the
24 Equality Group was the least likely of the three cohorts to
25 have experienced some form of conversion therapy?

Meyer - X

1 A. I believe that there were no changes in that. No
2 differences in the level of conversion therapy experiences.

3 Q. Okay.

4 A. So --

5 Q. Well, it was -- wasn't it 6.15 percent for the Equality
6 Group?

7 A. Yeah. If you go to the right further, I will be able to
8 explain what I mean.

9 Q. Okay.

10 A. Yeah. So --

11 Q. And --

12 A. So you're right, that nominally this was lower, but our
13 conclusion is that they -- it did not differ based on the
14 statistical test that is described in the last three columns.

15 Q. Okay. So lower but not statistically significant. Is
16 that fair?

17 A. Yes. Correct.

18 Q. And then in your -- in your study, it appears that the
19 members of the Equality Group were also the least likely to
20 be -- to be beaten, attacked, or sexually assaulted. Is that
21 fair?

22 A. The members of the Equality -- again, looking nominally at
23 these numbers, yes.

24 Q. It was 37 --

25 A. I would -- I would point out, if you don't mind, one

Meyer - X

1 thing. When you have lifetime measures, you actually generally
2 expect the younger group to have the least exposure because
3 they literally have less time to have experienced something.

4 So if you compare a 60-year-old to a 25-year-old, the
5 60-year-old will have more time in their lifespan.

6 So those measures are since age 18, and you're right that
7 they had less experiences of that.

8 Q. Okay. Fair enough.

9 And the percentage there is 37.33 percent for the Equality
10 Group; correct?

11 A. Correct.

12 Q. All right. And at least in nominal terms, this group was
13 also the least likely to have been threatened with violence?

14 A. Yes.

15 Q. Is that fair?

16 A. Yes.

17 Q. And, again, at least nominally, they were the least likely
18 to be -- to have been verbally insulted?

19 A. Yes.

20 Q. Okay. I -- again, I'm not considering the statistical
21 differences, but yes.

22 Okay. Well, let's turn just for a moment to page 12 of
23 this study. Is it fair to say that you began your research
24 with the hypothesis that because of these and other advances
25 younger sexual minority people, to quote you, would fair better

Meyer - X

1 than their older peers psychologically. Is that fair?

2 A. Correct.

3 Q. Okay. But as it turned out, your research didn't actually
4 support that conclusion; correct?

5 A. Correct.

6 Q. Okay. And, in fact, you concluded on page 13 that our
7 findings are clearly inconsistent with the hypothesis. Is that
8 fair?

9 A. Correct.

10 Q. Okay. And so is it fair to say that your research showed
11 that despite lives being better on nearly every metric you
12 considered, at least nominally, the Equality Group was, in
13 general, the most likely to attempt suicide. Is that fair?

14 A. I don't agree with life is better.

15 Q. Okay.

16 A. What we -- to be clear, what we base our assumption or the
17 hypothesis on was the global changes in the status of
18 homosexuality, about attitudes about homosexuality, and some of
19 the legal milestones that you -- that you talk about earlier
20 with sodomy and same-sex marriage.

21 What we're looking at here is that the experiences of the
22 young people definitely show still very -- extremely high
23 levels of those things.

24 So the -- the hypothesis that we came up with was not
25 supported in two ways. Number one, their life experiences were

Meyer - X

1 not improved significantly; and then, number two, the
2 consequent mental health outcome did not improve.

3 But I'm just pointing out that we did not conclude that
4 their life experiences were better. We did this as an a priori
5 hypothesis based on the legal and social indicators.

6 Q. Okay. So is it fair to say that despite the legal and
7 other -- other advances that we have discussed, that -- that
8 the members of this cohort, the youngest cohort, attempted --
9 well, faced -- faced psychological difficulty equal to or
10 greater than that of the older cohorts?

11 A. Yes.

12 Q. Okay. Now, isn't it fair to say, Dr. Meyer, that LGBT
13 identifying students at evangelical Christian colleges are an
14 exception to the overall trend of declining psychological
15 outcomes among LGBT people in your Equality Group?

16 A. As I said, I did not look at students in religious
17 colleges in this report. I don't have that information,
18 unfortunately.

19 Q. Okay. Well, are you -- are you familiar with a 2016 study
20 by Dr. Wolff, whom we'll hear from a little bit later, that
21 compares outcomes from LGBT-identifying students at evangelical
22 Christian colleges with other college-age LGBT students?

23 A. I'm not, I'm sorry to say.

24 Q. You have not reviewed that study?

25 A. I haven't.

Meyer - X

1 MR. SCHAERR: Okay. Your Honor, at this time I would
2 like to move for admission of Exhibit 20.

3 MR. SOUTHWICK: No objection.

4 MR. SCHAERR: Okay. Thank you.

5 THE COURT: Wait. I didn't hear from the other
6 party.

7 MR. DAVIS: No objection from the federal defendants.

8 THE COURT: Thank you very much. It will be
9 received.

10 MR. SOUTHWICK: Can you keep track of these?

11 They have admitted -- oops.

12 THE COURT: The intervenors have introduced one
13 exhibit, and I think your mic is on, Mr. Southwick.

14 So continue.

15 MR. SOUTHWICK: Thank you.

16 MR. SCHAERR: May I proceed, Your Honor?

17 THE COURT: Yes.

18 MR. SCHAERR: Thank you.

19 BY MR. SCHAERR: (Continuing):

20 Q. Now, Dr. Meyer, you refer to your report, at page 17, to
21 what you call people's natural sexual orientation or gender
22 identity. Now, by "natural," do you mean to imply a single
23 orientation that is stable and perhaps inborn?

24 A. No.

25 Q. What do you mean by "natural," then?

Meyer - X

1 A. It means that, as I said earlier, people's sexual
2 orientation is considered by medical and psychological
3 authorities as being a natural expression of human --
4 variability in human sexualities. So it doesn't -- it doesn't
5 imply theology as your question was suggesting.

6 Q. Okay. In your opinion, can sexual orientation or gender
7 identity be at least somewhat fluid and not necessarily fixed
8 from one's earliest years?

9 A. Yes.

10 Q. Okay. Well, given that, is it possible, say, for a young
11 woman to have a romantic relationship with another young woman
12 and then decide that, no, she's going to pursue relationships
13 only with men?

14 A. I mean, I wouldn't say that she decides. When we talk
15 about fluidity and sexual orientation, it talks again about
16 kind of a natural process.

17 I think when you talk about deciding, that has been --
18 that has been shown to not be effective in the sense that
19 sexual orientation change efforts based on people committing to
20 a certain decision, that is not naturally reflecting their true
21 feelings and true experiences.

22 So while it is possible to have fluid sexual orientation
23 over the lifetime, that does not mean -- there's no direct
24 relationship between that and saying that I can decide tomorrow
25 morning that I'm going to be gay and then I will start to have

Meyer - X

1 a fulfilling sexual relationship with men. That -- it's not
2 like a momentary decision or commitment but rather, as I said,
3 a natural fluid process that some people do find themselves
4 changing, so to speak, their -- the sexual orientation over
5 time or making decisions that they feel more comfortable with a
6 man, even though this hypothetical woman had a relationship
7 with a woman in the past.

8 It's not based on, kind of, will, usually.

9 Q. So you agree that the kind of transformation that I have
10 described in my hypothetical about the young woman could occur.
11 You're just saying that it would be a natural process rather
12 than a decision on her part?

13 A. Exactly.

14 Q. And do you believe that people who are bisexual do not
15 have a choice as to whether they will act on their attraction
16 towards people of the same sex or people of a different sex?

17 A. Again, I don't think it's a choice as much as bisexual
18 people are, I would say, open to a relationship with both men
19 and women. It doesn't mean that they can decide at any moment
20 any more than a heterosexual person can decide to have a
21 relationship with somebody that they're not really attracted
22 to, they do not have shared interests, or whatever it is that
23 makes an intimate relationship.

24 But for a bisexual person, there is the possibility that
25 they might be attracted and find an intimate relationship with

Meyer - X

1 a person who is a man or a woman, but it doesn't necessarily
2 mean that it will be both. Obviously, they could be in a
3 monogamous relationship with a woman or with a man for the rest
4 of their lives even though they are bisexual.

5 Q. So you don't think a bisexual woman can simply decide,
6 "I'm going to be only open to relationships with men and not
7 open to relationships with women"?

8 A. I think that is not the way, normally, relationships work.
9 But I guess if they're open to both and they decide to
10 completely block one side of that, you could argue that that is
11 possible. But now we're really in a hypothetical area.

12 The relationships don't normally work like that. It's not
13 that clear of a decision process. I think there's more complex
14 elements that come into how people pair up and develop intimate
15 relationships.

16 Q. But you agree that somebody could make that decision even
17 for religious reasons; correct?

18 A. I mean, they could make a decision, of course.

19 Q. Okay. And, now, is it -- so is it possible that a
20 Christian school's policy about permissible relationships could
21 become acceptable to a young woman who decides that she wishes
22 to conclude a relationship with a woman and willingly commit to
23 the kind of opposite-sex relationship that the Christian
24 school's policy permits?

25 MR. SOUTHWICK: Objection. Calls for multiple levels

Meyer - X

1 of speculation and incomplete hypotheticals.

2 THE COURT: Why don't you rephrase your question,
3 Counsel.

4 MR. SCHAERR: Sure.

5 BY MR. SCHAERR: (Continuing):

6 Q. Well, let's -- let's take the example of our -- of the
7 woman we have been discussing, hypothetically. Suppose she's a
8 student at a Christian school -- okay? -- and that the school
9 has the kind of policy that we have been discussing now, in
10 this case, that the plaintiffs object to. In your view, is it
11 possible for a young woman in that situation to decide that
12 she -- that she wants to -- that -- to conclude the
13 relationship with the woman that she's been involved in and
14 simply commit to limiting herself to the kind of opposite sex
15 relationships that the Christian school's policy would permit?

16 MR. SOUTHWICK: Same objections.

17 THE COURT: Overruled.

18 Go ahead, if you can answer the question.

19 THE WITNESS: I think that that would not be a
20 healthy approach to addressing a person like that because it is
21 basically what we have been discussing, which is a rejection of
22 her bisexual identity. So you are framing it in a way that
23 says, well, because she's bisexual, she can block that part,
24 feel rejected on that part of herself, which is her
25 bisexuality, which defines her, presumably; but she can just

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1 choose to, by force of will, ignore that part of herself and
2 become heterosexual.

3 To some extent, I understand what you're asking, but I
4 don't believe that is a healthy way of supporting a young
5 person who is bisexual.

6 BY MR. SCHAERR: (Continuing):

7 Q. Okay. But you -- but you agree it would be possible for
8 her to make that choice?

9 A. I mean, people make all kinds of choices or decisions.
10 Sometimes they're successful and many times they are not, and
11 we have seen -- now I'm talking of anecdotal experiences of
12 people who committed to marriages who are themselves gay and
13 bisexual and even after years have come to talk about how
14 difficult it was for them because they did not feel that it was
15 their true self and their true expression of love.

16 So, again, if you ask what is possible, many things are
17 possible, of course; but if you ask me, as a public health
18 expert, if that would be a direction that I would recommend in
19 terms of the mental health of the student, I would say no.

20 Q. So you believe people are defined by their sexualities.
21 Is that fair?

22 A. I mean, to the extent that we're talking about intimate
23 relationships, it is an important, obviously, defining
24 characteristic.

25 Q. Okay. Well, let me move on to a different topic. In

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1 paragraph 46 of your declaration and again in your testimony
2 today, you claim that religions can have a seriously adverse
3 effect on LGBT adults; correct?

4 A. Excuse me. Which paragraph?

5 Q. I believe it's paragraph 46 of your declaration, which I
6 think you referred to today or you may have.

7 A. Yes. I just wanted to make sure I have it. Yes.

8 Q. Okay. Now, if a school merely expresses a theological
9 belief that homosexual activity is wrong, is that problematic,
10 in your view?

11 MR. SOUTHWICK: Objection. Speculation.

12 THE COURT: Overruled.

13 You know, I'm being indulgent. Most of this is not really
14 helpful to the issues I need to address. It's maybe -- I'm
15 allowing people to explore it, but I really would be happy if
16 we could sort of focus on what I need to address. I think I've
17 understood what this witness has to say and what his expertise
18 is and what his report is about, and I am not seeing -- the
19 cross is not necessarily illuminating things I might want to
20 know about, but you can continue if you wish.

21 MR. SCHAERR: Well, Your Honor, let me just finish up
22 quickly on this point, if I may.

23 THE COURT: Sure.

24 BY MR. SCHAERR: (Continuing):

25 Q. Now, earlier today you used the term "sinful" to describe

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1 the views of religious groups about homosexual conduct;
2 correct?

3 A. I have, yeah.

4 Q. Can I infer from your discussion today that you disagree
5 with the claims of many religious organizations that it's
6 sinful to engage in sexual activity outside of a traditional
7 man-woman marriage?

8 MR. SOUTHWICK: Objection. Dr. Meyer's personal
9 theological beliefs are not up for examination today.

10 MR. SCHAERR: It's certainly relevant to bias.

11 THE COURT: Overruled.

12 Go ahead. Answer the question.

13 THE WITNESS: Do I agree -- I honestly don't
14 understand the question.

15 Can you repeat it, please?

16 BY MR. SCHAERR: (Continuing):

17 Q. Do you disagree with the claims of many religious
18 organizations that it's sinful to engage in sexual activity
19 outside of a traditional man-woman marriage?

20 A. I honestly cannot have a view on that. I understand that
21 some religious -- religions, this is their view, and what I was
22 referring to is basically reiterating what they're saying.

23 Do I agree with a religion? That would be presumptuous of
24 me to agree or disagree with the religion, but I do agree that
25 it is harmful for people who are marked as sinful. That was my

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1 only comment.

2 I'm not trying to make a comment about the righteousness
3 of the religion, obviously.

4 MR. SCHAERR: Okay. I have no other questions.
5 Thank you.

6 THE WITNESS: Thank you.

7 THE COURT: Any additional questions from the other
8 intervenor?

9 MR. LIPPELMANN: No, Your Honor. Thank you.

10 THE COURT: Thank you.

11 Redirect?

12 MR. SOUTHWICK: This is Paul Southwick. Nothing,
13 Your Honor.

14 THE COURT: Thank you. May this witness be excused?

15 THE WITNESS: Thank you.

16 THE COURT: Thank you. I appreciate your time and
17 your testimony.

18 MR. SOUTHWICK: Your Honor, might I have a two-minute
19 rest break before we start with the next witness?

20 THE COURT: Sure. We'll take a five- or ten-minute
21 break and everyone can use the facilities.

22 MR. SOUTHWICK: All right. And just for
23 everyone's -- just to kind of get a heads-up, I think that
24 these next two witnesses will be faster than the prior
25 witnesses. So I'm just being mindful of time.

1 THE COURT: Thank you for your heads-up. I
2 appreciate it.

3 We'll take five or ten minutes here.

4 (Recess taken.)

5 THE COURT: We're all back. Call your next witness.

6 MR. SOUTHWICK: Your Honor, this is Paul Southwick,
7 and plaintiffs would like to call Audrey Wojnarowisch as their
8 next witness.

9 THE COURT: Please say something so I can have you
10 pop up on the screen. If you wouldn't mind, just say your
11 name.

12 MS. WOJNAROWISCH: Hello. This is me. I'm Audrey.

13 THE COURT: Thank you. What that does is it enlarges
14 you so I can see you. Please raise your right hand.

15 MS. WOJNAROWISCH: Makes sense.

16
17 AUDREY WOJNAROWISCH,
18 called as a witness in behalf of the Plaintiffs, being first
19 duly sworn, is examined and testified as follows:

20
21 THE WITNESS: I do.

22 THE COURT: Thank you. Please -- you can put your
23 hand down. Please state your full name and please spell your
24 last.

25 THE WITNESS: My name is Audrey Wojnarowisch. My

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1 last name is spelled W-o-j-n-a-r-o-w-i-s-c-h.

2 THE COURT: Thank you. Go ahead. Go ahead, Counsel.

3
4 DIRECT EXAMINATION

5 BY MR. SOUTHWICK:

6 Q. Let me apologize for not getting your last name correct.

7 I think I had it correct before.

8 A. No, you're totally fine.

9 Q. Well, thank you for being here today. I know that this is
10 not something that every college student does, and so I
11 appreciate your bravery for being here.

12 Could you tell the Court just a little bit about yourself,
13 where you grew up, what kind of an environment and home you
14 grew up in, and cover a little bit of that before we get to
15 George Fox?

16 A. Sure. Absolutely. I am -- I have always lived in Oregon.
17 I grew up in Portland in kind of the southeast Portland
18 suburban area in an incredibly conservative and religious
19 household. My dad grew up in the Russian Orthodox church and
20 my mom and her family grew up in the Catholic church, and I
21 spent my childhood living with them and four siblings and went
22 to George Fox right out of high school.

23 Q. Great. And how old were you when you first applied to
24 George Fox University?

25 A. I was 17 at the time.

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1 Q. And how old are you now and what year are you in in
2 school?

3 A. I'm 21 right now, and I'm a senior at Fox, just finishing
4 up my last couple of semesters.

5 Q. Great. Tell me a little bit about what it was like
6 applying to George Fox. Why did you apply, and why did you
7 ultimately choose to go there?

8 A. Well, it was a nerve-racking experience. Applying for
9 college, I think, always is, but my -- the reasons that I had
10 for choosing George Fox had nothing to do with my gender or
11 sexuality at the time. I was interested in going to a smaller
12 university. I had been homeschooled for a long period of time,
13 and I was worried about kind of getting lost in a bigger
14 school.

15 George Fox University is known specifically for their
16 Be Known promise, that their students will be known by name and
17 somewhat intimately by their professors and the staff at the
18 school, and that was especially appealing to me.

19 I wanted to go to a Christian school. I devoutly practice
20 my own faith, and that was important for me to continue
21 independently at college. And I wanted to be not too far from
22 my family who lives just about 30 minutes away from campus now.

23 Q. And what was it like for you when you first arrived on
24 campus? What was that first week like?

25 A. It was fun for about the first two days, and after that

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1 kind of initial welcome weekend thrill of being exposed to
2 college for the first time, the sheen kind of wore away, and it
3 quickly became obvious that it was going to be a really long
4 and difficult experience.

5 Q. You referenced your gender identity and sexuality a little
6 bit, but could you talk about that and how you thought about
7 that when you were in your high school years and then how you
8 continued to think about it when you got to Fox?

9 A. Yeah. It was always there, but it was something I
10 decidedly did not unpack while I lived with my parents. It
11 wasn't a safe environment to do so, and there -- there was
12 no -- there was no opportunity. It wasn't -- it was -- it
13 would have been extremely dangerous for me to have tried to
14 push those boundaries at the time, and I -- I was pretty -- I
15 had my head down.

16 When I got to college, I had control over my time for the
17 first time ever and over who I was going to be friends with and
18 the places that I was going to go, and so it was a natural time
19 for me to start unpacking all different parts of my identity,
20 to decide the things in my life that were going to be important
21 to me, and to begin expressing myself in the ways that felt
22 natural to me rather than the ones that were imposed upon me.
23 And my gender and sexuality was a part of that.

24 I identify as both bisexual and nonbinary, and that was
25 quite a process to begin unpacking it at George Fox as it

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1 became pretty immediately obvious that while I had more freedom
2 to express myself and be who I am outside of my parents'
3 household, it certainly was not going to be a loving and
4 accepting environment to do that at George Fox either.

5 Q. Would you describe it as a safe and supportive
6 environment, or would you describe it differently?

7 A. Not in the slightest. The general message that I have
8 received from George Fox is that queer identities are not --
9 they're not acceptable. They don't align with the image the
10 University wants. We are allowed to attend silently as long as
11 we are not ourselves too much or too apparently. They invite
12 us to give our tuition but not to advocate for our needs.

13 Q. Was there a period at George Fox where you started to feel
14 some sense of hope and safety because of events that were
15 unfolding?

16 A. Yeah. During my sophomore year there was another student
17 on campus, a delightful friend, who was a senior at the time
18 and who came out as a gay man in a beautiful performance in
19 front of most of the student body. It was -- it happened in
20 the chapel on campus during a live student event. It was
21 beautiful. The reaction from most of the student body in the
22 room at that moment was celebratory and inviting, and he won
23 the contest by popular vote of the students there. And in that
24 moment the support for that student was so tangible and real
25 that it -- it was encouraging, and the kind of social movement

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1 that followed in the coming days, weeks, and months, it felt
2 like if there was ever going to be a time where it was
3 relatively safe to come out publicly on campus, that was going
4 to be it, and then the demand for -- for people to speak up and
5 share their experiences had -- it had never been so real to me.
6 So if there was going to be a time to speak, whether I was
7 truly ready or not, that was the moment that it was going to
8 be. So I began to come out publicly then.

9 Q. And at some point were those -- those hopes for feelings
10 of safety and belonging, at some point were those dashed by the
11 University?

12 A. Yeah. Students came together shortly after this
13 performance to put together subcommittees and groups, and the
14 University attempted to placate those for a while. There were
15 listening sessions and town halls where professors and faculty
16 and board members sat in front of queer students and appeared
17 to listen to our heart-wrenching testimonies of our experiences
18 dealing with all forms of discrimination, being ignored, and
19 feeling physically unsafe and in danger; and, ultimately, no
20 changes were made at the university after those hearings.

21 Q. And after the student's performance and the groundswell of
22 support from the student body, did the administration issue any
23 kind of response or official communication in response?

24 A. Yeah. Yes. A few days following the performance, the
25 president of the University sent out a mass email communication

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1 to the entire student body reminding students of the lifestyle
2 policy that states marriage is between a man and a woman and
3 sex is reserved for marriage, et cetera; reminding that the way
4 the University interprets the Bible that homosexuality is a
5 sin, et cetera, et cetera. And it was so incredibly
6 disproportionate, it felt, that the University would respond to
7 one student's moments of vulnerability and subsequent
8 acceptance with bullying from the highest chair of
9 administration at our school that he would feel it was
10 important to send out an email reminder of the school's
11 beliefs. Because the student shared something that didn't have
12 anything to do with marriage or sexuality; just that he wanted
13 to be himself.

14 Q. What kind of impact did the University's response have on
15 you and the other queer students that you were spending time
16 with?

17 A. It was a difficult time just to exist as a queer person on
18 campus. That email and the response to the student coming out
19 were the only subject of conversation on campus for weeks
20 after. It was a hot topic for debate in classrooms, in
21 cafeterias, in residence halls. It was impossible to get away
22 from.

23 Students and professors and just everyone constantly
24 debating our right to exist and why we would choose to exist at
25 a Christian University, it was -- tensions were so high, and it

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1 felt as though because we couldn't go anywhere without hearing
2 about whether people thought that we should be allowed at Fox
3 or why we were at Fox or our -- our education in those weeks --
4 we felt so incredibly unimportant because the whole time for it
5 we were advocating for ourselves in our own living spaces.

6 Q. Thanks for sharing that, Audrey.

7 I want to ask you a few more questions about your
8 experiences at Fox, and some of these might be of a sensitive
9 nature. So if you, you know, want me to ask something
10 differently or you need time, just let me know.

11 A. Sure.

12 Q. In your declaration in support of your Title IX complaint
13 and this lawsuit, you talked about, you know, George Fox's
14 policies. You referenced the lifestyle policies, the policies
15 against homosexuality, and also some of the experiences that
16 you have had there, and you talk about how the policies affect
17 you and your -- I think the statement you made was "These
18 school policies affect me and my brain. They affect my
19 development and my family. They also prevent me from getting
20 the mental health and mentoring support that I need."

21 Could you talk to us a little bit more about that, about
22 some of the mental health impacts, the kinds of -- the kinds of
23 impact that you have experienced for your mental health and
24 barriers to getting the kind of support that you would need?

25 A. Yeah. The queer experience, at least for me, at its very

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1 core, has to do with constantly breaking down and building back
2 up to understand my own identity. I have had to disassemble my
3 gender and sexuality in my own head in order to understand what
4 is it that I am and why I didn't turn out to be what it is that
5 my parents and the rest of the world, it seems, expected I was
6 going to be, and I -- I have had to tear apart the religious
7 beliefs that I was given by my parents and -- and try to
8 rebuild them and understand why I believe what I believe. I
9 have had to disassemble the criticism that I have received from
10 superiors at my school, that I received from my parents, that I
11 received from friends and former friends who criticized the
12 decisions that I have made about how I choose to live and
13 accept myself.

14 A huge part of being queer for me has been experiencing
15 rejection from family and experiencing financial, emotional,
16 relational independence far before I was ready. I have had to
17 care for myself in ways that I was so incredibly unprepared to
18 do. During these such formative years, being 17, 18, 19,
19 and -- and learning how I'm going to -- learning how I'm going
20 to interact with the world, the -- the mental health resources
21 that are available to most students on campus are not
22 necessarily safe for queer students.

23 The services that would be most important for me to be
24 able to access because of the level of rejection and the
25 tumultuous experience that is trying to reconcile one's gender

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1 and sexuality and religion and identity and relationships all
2 together, I needed mental health resources. I needed help
3 coping with depression and anxiety. I needed badly to be
4 diagnosed with ADHD and had no -- no support from the school
5 in -- in trying to sort all of that out for myself.

6 That was a huge setback for me and a huge part of my
7 college experience, unfortunately.

8 Q. And is that, at least in part, because even the on campus
9 counseling center is required to abide by George Fox's
10 lifestyle policies regarding homosexuality? Is that part of
11 why as a queer student you don't feel safe going there?

12 A. Absolutely. Yeah. There have been students in the past
13 who have been subjected to conversion therapy at the Health and
14 Counseling Center there, and there's no promise that that won't
15 continue to happen.

16 The Health and Counseling Center is also governed by
17 school policy and lifestyle policies that would prevent them
18 from advising me on my gender and sexuality in a way that would
19 be healthy for me. So, yeah, not a safe place to go.

20 Q. So when you arrived at Fox, in your declaration, you
21 describe that you met an initial group of queer people and
22 that, as is true with any people, whether queer, straight, what
23 have you, but not everyone is a safe person and that you had an
24 experience with someone who is really not safe for you.

25 Could you -- could you talk to us about how -- how you met

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1 that person and what -- what that person did to you?

2 A. Absolutely. Yeah, I mean, in my first few days and weeks
3 of school, just like anybody else during the welcome and
4 initiation period of college, I was trying to make as many
5 friends as possible and look for people that I had things in
6 common with. I was looking for people in my major, people that
7 I shared interests with, and that included my queer identity,
8 and I was looking for other people who were interested in
9 theology that accepted queer people. And through that kind of
10 experience, I happened to meet a person at school who was not
11 safe.

12 And during my first and second semester at school
13 especially, I was stalked, followed, harassed, sexually
14 harassed, and eventually sexually assaulted by another student
15 on campus. I received hundreds of text messages and phone
16 calls from this person, though I never gave them my phone
17 number. They eventually found my school schedule somehow.
18 They followed me from one class to another, had a friend follow
19 me from one class to another. One night they had a -- they
20 sent a friend to my dorm room to confront me in the hallway of
21 my residence hall, which was a terrifying experience, as I -- I
22 wasn't out to, I mean, any of those people yet. I felt like I
23 had no control over the narrative about me that was kind of
24 quickly sweeping around my very small Christian university, and
25 I felt completely powerless and unsafe, especially after the

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1 sexual assault that I experienced. Yeah.

2 Q. Being -- thank you for sharing that.

3 Surviving the sexual assault and the kind of stalking and
4 harassment that you described is difficult for anyone. Do you
5 feel like it was made more difficult because of your queer
6 identity and the identity of the person who assaulted you?

7 A. Yeah. Because I -- because we were talking about my -- my
8 very first months on campus, I -- I hadn't come out to many
9 people yet. There were -- I hadn't gone through the process,
10 obviously, of figuring out who was safe and who wasn't and what
11 kind of people in this new environment I was going to be able
12 to trust. So I didn't have a social support network yet to
13 rely on, and the infrastructure of support that was meant to be
14 built into the university didn't work for me.

15 I had to go to my RA to report the sexual assault, and I
16 was informed that my RA reported that to her superior, who's
17 called the area coordinator -- just the boss of all resident
18 advisors on campus. The job of my RA is to supervise all of
19 the 20 girls who lived in that dorm hall and to take care of us
20 specifically in situations such as this, but whether it be
21 because of my resident advisor or her superior area
22 coordinator, a case was never even filed with the Title IX team
23 at my university, and I received no support from the school.

24 I had to negotiate with this person who had sexually
25 assaulted me. For my own safety, I had to pretend to be

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1 friends, to placate them. I had to pacify friends and their
2 relationships so that they would stay out of it and stop making
3 it worse. It was continually a pretty terrifying experience,
4 yeah, for -- for several years.

5 Q. And you stated in your declaration that when you reported
6 to your RA the sexual assaults that you asked your RA to keep
7 your sexuality confidential --

8 A. Yes.

9 Q. -- so that you wouldn't lose friends and get in trouble
10 with the school.

11 Can you tell us a little bit more about that and also how
12 your RA reacted to that?

13 A. She was very uncomfortable with that piece of information,
14 specifically. It was so uncomfortable for me to have to
15 approach someone who -- in a moment where in order to reach out
16 for support I had to bear myself in a way I wasn't used to, in
17 a new way, and to come out to a person that I didn't know,
18 really, and I could tell wasn't supportive of me, didn't agree
19 with my identity, had her own opinions about potentially why
20 this may have occurred. It felt, after that experience, that
21 it -- it didn't matter what had happened to me or what had
22 continued happening to me because the support systems that were
23 in place were clearly not meant for me, and my requests for
24 support were not welcome there.

25 Q. So thank you for talking about all that, Audrey, and I --

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1 I'm going to be introducing a few documents to you.

2 A. Sure.

3 Q. This might be a little strange. We're doing it over the
4 computer. And the first one that I'm going to introduce is
5 your Title IX complaint.

6 MR. SOUTHWICK: So this is under plaintiffs' exhibit
7 list Audrey's Title IX Complaint, and I believe that this will
8 be Plaintiffs' Exhibit No. 9.

9 Any objections?

10 THE COURT: Hearing none, it will be admitted.

11 MR. SOUTHWICK: All right. I'm going to share my
12 screen here.

13 BY MR. SOUTHWICK: (Continuing):

14 Q. So Audrey you have already walked us through most of the
15 statements in the declaration; so I'm not going to have you do
16 that again, but I --

17 A. Sure.

18 Q. I do want to acknowledge, first of all, that you did file
19 this Title IX complaint, and you've seen this document before;
20 is that right?

21 A. Yes, that's right.

22 Q. And can you explain to the Court why you filed this,
23 essentially? You know, what are you hoping to come out of
24 making this report and filing this Title IX complaint?

25 A. During this whole experience, I was essentially silenced,

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1 whether that be -- I mean, not whether it be -- because of both
2 implicit and explicit biases from the university. My hope in
3 filing the report is that my voice be heard the way that it
4 should have been when I initially requested support. I hope
5 that future students who experience things like this on the
6 campus that I have spent the last four years will not feel like
7 they have to suffer alone. I hope that it will be seen that
8 these incredibly explicit and obvious forms of discrimination
9 do exist, happen, and badly need to be corrected and avoided in
10 the future.

11 Q. It looks here, Audrey, that you filed this on July 24,
12 2021. That was July. We're in November. It's been several
13 months. Has the Department of Education's Office of Civil
14 Rights done anything to help you in response to the complaint
15 that you filed at this point in time?

16 A. No. Shortly after the case went public, the Title IX team
17 at my university contacted me to set up a meeting of what
18 seemed like an attempt to try to save face. Nothing came from
19 that meeting. This sexual assault happened years ago now, and
20 the person who assaulted me no longer attends the university.
21 So there's virtually nothing that they can do to act as though
22 they support me at this point.

23 But other than that particular person from my university's
24 Title IX team, no one has reached out to me, no.

25 Q. And in your Title IX complaint, in addition to the

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1 personal experiences with sexual assault and the other personal
2 experiences that you described, you've also asked the
3 Department of Education to evaluate or investigate George Fox
4 University's anti-LGBT policies. Is that fair to say?

5 A. Absolutely.

6 Q. And you're still living under those policies as a student;
7 is that right?

8 A. Yes. And will be until I graduate.

9 Q. And would you say that those school policies themselves
10 have a negative impact on your feeling of safety and belonging
11 at the school?

12 A. Yeah. Any time another student feels as though I don't
13 belong here or shouldn't belong here, they have -- they have
14 literature to point to to support that claim. The University
15 not only has explicit belief about my particular identity
16 listed in their lifestyle standards, which is a value-packed
17 term all by itself, the -- they have imposed a particular
18 interpretation of the Bible on their student body. I believe
19 in the Bible. I go to church. I love Jesus profoundly. It's
20 a huge part of my life and a reason that I chose to go to a
21 Christian school. But this is -- this is not, by any means,
22 the only interpretation of these scriptures that have been
23 cited, and I -- I find it perpetually discouraging that
24 scripture is weaponized against my own identity to force me
25 into silence or compliance.

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1 MR. SOUTHWICK: All right. I would like to -- I have
2 this George Fox University policy language. I would like to
3 introduce this as Plaintiffs' Exhibit No. 10.

4 THE COURT: No objection?

5 Not hearing any, it will be received.

6 BY MR. SOUTHWICK: (Continuing):

7 Q. I'm not going to ask you to go through this any further
8 because you've already discussed it, Audrey. Thank you for
9 that.

10 A. Sure.

11 MR. SOUTHWICK: The last two documents I'd like to
12 introduce with respect to Audrey are going to be the George Fox
13 Exemption Assurance as Exhibit No. 11 and the correspondence
14 between OCR and NWYMF, George Fox, as Exhibit No. 12.

15 THE COURT: Any objections?

16 I'm hearing none. It will be received. Both of them.

17 BY MR. SOUTHWICK: (Continuing):

18 Q. So, Audrey, I have introduced as Exhibit 11 and 12 some
19 correspondence between OCR, which is the Office of Civil
20 Rights, and the Northwest Yearly Meeting of Friends. And the
21 Northwest Yearly Meeting of Friends is the denomination that
22 George Fox is familiar -- is affiliated with. Is that your
23 understanding?

24 A. Yes, that's correct.

25 Q. And then I'm also introducing the George Fox Exemption

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1 Assurance, which is a packet of documents in which George Fox
2 has request and received religious exemptions over the years,
3 religious exemptions from Title IX, including a religious
4 exemption relating to gender identity and a transgender student
5 at George Fox who had experienced housing discrimination.

6 Are you somewhat familiar with these documents that I've
7 described? Not that you're an expert or anything, but are you
8 somewhat familiar with them?

9 A. I am familiar with them, yes.

10 Q. So the documents reveal that in 2015 a -- a transgender
11 student at George Fox filed a Title IX complaint and that after
12 a process back and forth with the Office of Civil Rights and
13 the denomination and the University, eventually the Department
14 of Education's Office of Civil Rights closed --
15 administratively closed the transgender student's complaint on
16 the basis of a religious exemption to Title IX.

17 Are you generally familiar with that?

18 A. I am, yes.

19 Q. And so my question to you, Audrey, is given that the
20 Office of Civil Rights has already given a religious exemption
21 to George Fox to allow it to discriminate against a transgender
22 student, how does that make you feel as a queer student who has
23 also experienced similar types of discrimination and harassment
24 at George Fox University?

25 A. Well, this is incredibly relevant, as you said, to my own

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1 life. This is a student who attended George Fox, not too long
2 before I did, who experienced similar forms of discrimination
3 from similar parties that I'm experiencing -- from the
4 president of the University at this bottom -- at the bottom of
5 this document. Robin Baker is still the president of the
6 University. I've spoken to him many times about similar
7 issues.

8 I have spent by far more time at George Fox advocating for
9 my own needs and right to exist than I have spent on my actual
10 education. It's been an eternally long process. It's part of
11 my everyday life, and it's incredibly discouraging to see that
12 a decision has already been made.

13 That is so far above my head. It reaffirms the idea I
14 mentioned earlier that no matter how loudly I scream about the
15 kind of help that we need, the systems in place have already
16 decided that we are not -- that we are not important enough to
17 warrant help or support for that.

18 Queer students at religious schools are a bargaining chip
19 to be negotiated in arguments about our rights. So it is --
20 it's discouraging, to say the very least. And to maybe put it
21 a little bit more accurately, it's a dark cloud that hangs over
22 our heads every day.

23 Q. And does it feel like, given the Office of Civil Rights'
24 response to the transgender student and George Fox's ongoing
25 discriminatory policies, does it -- does it feel like the

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1 Department of Education is closing a door on you and preventing
2 you from being able to assert the Title IX rights that you
3 might otherwise have?

4 A. Yeah. Absolutely. It feels like a door has been closed
5 that I can -- with my request, but it will be to that closed
6 door, yes.

7 MR. SOUTHWICK: Well, thank you very much, Audrey,
8 for sharing today with us. I don't have any further direct
9 questions at this time. Some of the other lawyers might have
10 some questions for you. I'll still be here, and I might ask
11 you some follow-up, depending on their questioning, but thank
12 you very much for your testimony today.

13 THE WITNESS: Absolutely. Thank you.

14 THE COURT: Counsel for the Department of Justice, go
15 ahead.

16 MR. DAVIS: Good afternoon. Can you hear me,
17 Your Honor?

18 THE COURT: I believe I can.
19 Can you hear, Ms. Jessup?

20 THE WITNESS: Yes.

21 THE COURT REPORTER: Yes, I can.

22 THE COURT: Go ahead.
23
24
25

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CROSS-EXAMINATION

BY MR. DAVIS:

Q. I just have a couple of questions.

To your knowledge, your Title IX complaint remains pending with the Department of Education; correct?

A. To my knowledge, yes.

Q. And have you filed any lawsuits directly against George Fox University?

A. No, I have not.

MR. DAVIS: Thank you. No further questions.

THE COURT: For the intervenors?

CROSS-EXAMINATION

BY MR. GREY:

Q. May I call you "Audrey" to save myself your last -- mispronouncing your last name?

A. You most certainly can.

Q. My name is Herb Grey. I'm one of the lawyers for the coalition for Christian Colleges and Universities, and I had some questions.

I want to say, first of all, I understand a lot of your testimony describes fairly difficult and traumatic things, and I don't want to make those things worse. So I'm going to touch on some of those things but only to establish timelines and things like that.

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1 So as you reflect on your experience at George Fox, do you
2 have a sense that George Fox adopted these policies you've
3 talked about voluntarily, or are they -- is that something that
4 the Department of Education required them to do?

5 A. I'm not --

6 MR. SOUTHWICK: Objection. Speculation.

7 MR. GREY: Well, she started to answer. I'm not sure
8 I caught her answer.

9 THE COURT: I'm not sure she has an answer for you.
10 I think she was saying she didn't necessarily have an answer,
11 but go ahead.

12 Go ahead. Can you answer his question?

13 THE WITNESS: I -- I don't believe that I'm really
14 qualified to answer that, no.

15 BY MR. GREY: (Continuing):

16 Q. Well, is it your understanding that George Fox adopted
17 those policies on their own voluntarily, or do you have an
18 understanding one way or the other?

19 A. Again, I'm not an expert on George Fox's interactions with
20 the Department of Education and only in my own experience, but
21 I would say that George Fox's policies are supported by the
22 Department of Education, and that's what I'm here to speak
23 about.

24 Q. Okay. But in terms of the communications you described
25 that you have had with the University, they rely on their own

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1 policies. That's what is communicated to you?

2 A. They form policies that are then supported by the
3 Department of Education, yes.

4 Q. And why do you say they're supported by the Department of
5 Education?

6 A. The exemptions that they have requested have been granted
7 by those parties, yes.

8 Q. Okay. I know it was a long time ago, before you were even
9 born, but do you know how Title IX even came to be?

10 A. Again, I am not a legal expert. I'm here only to talk
11 about my own experience in college.

12 Q. So if I told you it was passed by Congress, would that be
13 surprising to you?

14 A. No.

15 Q. I'm sorry. You've frozen.

16 MR. SOUTHWICK: Audrey, it looks like you might have
17 frozen there.

18 THE COURT: Now she's gone.

19 MR. SOUTHWICK: Oh, she's coming back. They're
20 coming back.

21 THE WITNESS: I believe I lost connection for a
22 moment there. If I missed a question, I apologize.

23 THE COURT: You did lose connection, and I think the
24 answer to your -- the question about how Title IX was developed
25 I think was still standing or was in front of you, and you

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1 froze when you started to give that answer.

2 THE WITNESS: Gotcha. Yes. Apologies.

3 No, I -- I don't think that would surprise me. It sounds
4 like that's how laws come to be.

5 BY MR. GREY: (Continuing):

6 Q. Okay. And whatever action that the Department of
7 Education does, in terms of enacting regulations, it's based on
8 what the -- the statute that Congress passed. Does that sound
9 right?

10 MR. SOUTHWICK: Objection. Objection. Calling for
11 legal conclusion.

12 MR. GREY: I'm just asking for --

13 THE COURT: I'm just going to say this -- how is this
14 helpful to the decision I need to make? So let's ask questions
15 and get to points that relate to what I -- the decisions I need
16 to make.

17 BY MR. GREY: (Continuing):

18 Q. Okay. So if I understood your testimony, what you're
19 really asking for is for the religious exemption to go away.
20 Is that what -- what you're desiring here today?

21 MR. SOUTHWICK: Objection. Misstates prior
22 testimony, but you can answer, Audrey, to the best you can.

23 THE WITNESS: Yeah. I'm asking that queer students
24 be protected in the spaces that we deserve to be. I -- yes, as
25 I've already stated in my testimony, my request is that the

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1 exemptions that have been granted to George Fox no longer stand
2 so that no barriers exist between me and the support that I
3 believe that I deserved to get.

4 BY MR. GREY: (Continuing):

5 Q. And if the religious exemption goes away, do you have any
6 thought about how that might impact the policies that
7 George Fox has in place going forward?

8 A. Yeah, I think it'd be really --

9 MR. SOUTHWICK: Objection. Again, speculation.

10 THE COURT: Do you want to go ahead and answer? Go
11 ahead and answer the question.

12 Again, these are not necessarily helpful to the decider
13 today.

14 THE WITNESS: Yeah, I -- I think it's exciting to
15 imagine a university where transgender students are treated
16 with bodily autonomy and human respect and queer students are
17 allowed to access the resources that they need to live and
18 thrive as people who are conscious of their own decisions and
19 able to be themselves without fear for their lives and safety.
20 That sounds like a future I would enjoy imagining, yes.

21 BY MR. GREY: (Continuing):

22 Q. Okay. So if, for some reason, George Fox lost Title IX
23 funding -- well, let me back up.

24 My understanding, from your declaration, is that you
25 received federal financial aid during the time that you have

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1 been at Fox. Is that correct?

2 A. I do receive financial aid, yes.

3 Q. Okay. And would you be able to go to George Fox if you
4 didn't have that financial aid?

5 A. I can speculate about how financial means would be met
6 otherwise, but because that's not the case, that's not
7 something I have had to explore. Yes, scholarships can be
8 obtained in other ways. I'm sure I would still be able to
9 attend Fox.

10 Q. Okay. So let me go back to the assault that you
11 described, which I understand was a fairly traumatic thing. So
12 the stalking and the -- the assault that you described, can you
13 tell us roughly the time frame for that?

14 A. Yeah. I'm not prepared at the moment to give incredibly
15 specific details. I'd probably have to look at a calendar, but
16 it occurred over my first two semesters at Fox. So, yes, I met
17 this person during the first few weeks of school and had some
18 form of contact with them for the next two semesters, and then
19 still, unfortunately, longer after the sexual assault occurred.
20 So probably the first or second semester.

21 Q. So if I understand correctly, you started at Fox in the
22 fall of 2018?

23 A. Uh-huh.

24 Q. So it would have been in the 2018 to early 2019 time
25 frame?

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1 A. Yes.

2 Q. Okay. And did I understand that the person that assaulted
3 you was somebody that you had met through the queer group that
4 you initially got acquainted with at Fox?

5 A. No. That's not true. Actually, I met this student at a
6 public campus event. A school dance.

7 Q. Okay. And you indicated that you had been led to believe
8 that once you reported to your RA that there was going to be a
9 Title IX report filed. Do you -- when did you have the
10 discussions about that Title IX report?

11 A. At the time that the sexual assault occurred, and I --
12 it's a given that at that time that a Title IX report would be
13 filed. I am aware that Title IX has been revised recently, but
14 at the time, it is mandatory that once a report of that is
15 given to a mandatory reporter, like an RA, an investigation is
16 automatically launched, which did not happen.

17 Q. Okay. And was that in 2018 or 2019?

18 A. That was in 2019.

19 Q. Okay. And when did you find out that a Title IX report
20 hadn't happened?

21 A. As a freshman in high school -- sorry. Pardon me. I
22 misspoke. As a freshman in college, with a fairly limited
23 understanding of the legal processes surrounding Title IX, I
24 perhaps didn't realize as soon as I should have that I should
25 have been contacted immediately by the Title IX team if a case

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1 had been filed. That's the process that normally would have
2 occurred. I would have received an email from Title IX
3 saying -- offering various kinds of support and also informing
4 me that they were going to launch that mandatory investigation
5 of my case.

6 After a somewhat significant amount of time had passed and
7 nothing happened was when I realized that a report had not been
8 filed, and I -- I looked into it a few months later to find
9 that one had not been filed at all, yes.

10 Q. And about when did you figure that out?

11 A. Later on in 2019.

12 Q. Okay. So you described earlier your decision to go to Fox
13 and reasons why you picked Fox.

14 So do I understand that you wanted the religious school
15 environment? Was that part of the reason you chose Fox?

16 A. Yes. I -- I'm a Christian and I chose Fox, in part,
17 because I wanted to continue developing my faith and practicing
18 that and also to --

19 Q. You're breaking up again, I'm afraid, Audrey.

20 THE COURT: Can you go back and just -- you're
21 still -- now you're gone.

22 THE WITNESS: I apologize again for the connection.
23 I missed a question.

24 THE COURT: You were explaining why you chose to go
25 to George Fox. So that's the rough approximation of the

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1 question. Why don't you go back. Because your answer was
2 spotty, if you could sort of state it -- restate it.

3 THE WITNESS: Yes, I will. In part, I chose George
4 Fox because I wanted to attend a Christian university. I am a
5 Christian and wanted to continue practicing my faith. I also
6 chose the school because of its physical proximity to my family
7 and my siblings and because I wanted to attend a school of a
8 particular size. Yes, that was one of the main reasons that I
9 chose Fox.

10 BY MR. GREY: (Continuing):

11 Q. And at some time during the admission and enrollment
12 process, did you become aware of George Fox's lifestyle
13 statement?

14 A. Uh-huh. The lifestyle statement is something that you
15 have to sign in order to attend Fox. So that happened during
16 the admission process, yes.

17 Q. Did you, in fact, see that and sign it?

18 A. Yes, I did.

19 Q. And if we can show Exhibit -- CCCU Exhibit 11.

20 Can you bring that up, Josh?

21 Does that look like the Community Lifestyle Statement?

22 A. I'm still waiting for it to appear on my screen, but I
23 imagine so.

24 Q. Can you see it now?

25 THE COURT: It's on my screen.

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1 THE WITNESS: Yes, that is the lifestyle policy.

2 Uh-huh.

3 BY MR. GREY: (Continuing):

4 Q. And does that look like the same one that you saw and
5 signed back before you started at Fox?

6 A. Yes.

7 MR. GREY: Okay. We would move for admission of
8 Exhibit -- CCCU Exhibit 11, please.

9 MR. SOUTHWICK: No objection.

10 THE COURT: Hearing no objection, we'll go ahead and
11 admit it.

12 BY MR. GREY: (Continuing):

13 Q. You also had a discussion already with Mr. Southwick about
14 the -- I believe it was the community standards policy that he
15 showed to you.

16 Do you remember that?

17 A. Yes. I'm not aware whether that's a separate document
18 necessarily, but yes.

19 Q. Yeah, it is a -- it is a separate document. So it was
20 Plaintiffs' Exhibit 10?

21 A. Yeah.

22 Q. And in terms of the -- in terms of the basis for this
23 Community Lifestyle Statement and the lifestyle standards that
24 have already been discussed, do you understand those to be
25 based on the Bible?

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1 MR. SOUTHWICK: Objection. Calls for speculation.

2 THE COURT: Overruled.

3 THE WITNESS: It is a highly speculative question.

4 Let me see how best to -- I understand that the Bible is cited
5 in it, and I understand that those who wrote it believe it to
6 be based on the teachings of the Bible, although that is not
7 the same conclusion that I have come from -- come to from my
8 reading of the Bible and my practicing of Christianity.

9 BY MR. GREY: (Continuing):

10 Q. So you just have a different view of what the Bible says
11 about these particular subjects than what George Fox has
12 expressed in these documents?

13 A. Yes.

14 Q. Okay. At the time that you came to Fox, did you have a
15 different belief or understanding about those documents?

16 A. No. I believe that -- I believe in the Bible, and I
17 believe that my identities are seen and loved by God, and I
18 disagree with those documents on the basis of that belief.

19 Q. Okay. And if we can put up CCCU Exhibit 11. Do you have
20 the supporting LGBT document? There.

21 Have you seen this particular document before?

22 A. I have. Yes, I have seen this document before.

23 Q. Okay. And I'm going to go out on a limb and assume that
24 you have a different view of how things play out at George Fox
25 than what's described here.

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1 A. Yes. Earlier, during my testimony here, I mentioned that
2 George Fox has taken several steps to save face, mostly for
3 press, and I would consider this absolutely to be one of them.
4 This document says that LGBTQ students are seen and welcome.
5 And while, again, we're welcome to give our tuition, we are not
6 welcome to receive support or request the kind of
7 accommodations that we need to survive and thrive at school.
8 So I think this is a completely hollow statement, yes.

9 Q. Okay. And, again, referring to the Community Lifestyle
10 Statement, do you recall a portion that says, "We believe the
11 Bible teaches that all persons are created in God's image and
12 that God actively seeks renewed relationships with every
13 individual. We are bound, therefore, to regard each person
14 with love and respect, citing Romans 12:9-21, I Corinthians 13,
15 and Ephesians 4. So we avoid discrimination, abusive and
16 manipulative actions."

17 So do you understand that George Fox, in this statement,
18 is calling for people to be civil and respectful and loving to
19 each other?

20 A. I think that most people would say that they respect other
21 people regardless of whether their actions reflect that.
22 George Fox included.

23 MR. GREY: So I would offer the -- this statement
24 about the supporting LGBTQ students at George Fox into
25 evidence.

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1 MR. SOUTHWICK: No objection.

2 THE COURT: Not hearing anything else, it will be
3 received.

4 BY MR. GREY: (Continuing):

5 Q. So I'm getting near the end here; but, initially, in
6 paragraph 14 of your March 23, 2021, declaration, you said
7 after you came out, quote, "campus felt safe for me more than
8 it ever had before."

9 Do you remember making that statement?

10 A. Yes, I did. That was in regard to the support from other
11 queer students that came together to advocate for ourselves and
12 each other, including Reed, that student who I had mentioned
13 had come out in a public performance. That was referring to a
14 kind of intra-community support, not support from the
15 University or student population at large. I felt safe with my
16 peers and other queer students.

17 Q. Okay. And then later on, in paragraph 34, you say, quote,
18 "I do not feel safe on campus."

19 A. That's true.

20 Q. Can you help me understand how that is different from what
21 you just said?

22 A. Yeah. After the student came out publicly and was
23 received by an outpouring of support from other queer students,
24 and we took that opportunity to -- to come together in a way I
25 hadn't seen before. Queer students felt, for a moment, that it

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1 was -- that they could reach out and look for each other, I
2 think. It was a moment where closeted primarily queer students
3 at Fox realized that they weren't alone, and that if they --
4 there might be other students who shared experiences like their
5 own, and I found a great deal of other queer students who had
6 gone through similar experiences to my own who had experienced
7 rejection from family, who had experienced sexual assault, who
8 had experienced discrimination from the University, who'd been
9 silenced and quieted, and we found a sense of safety and
10 solidarity in one another.

11 It was safe for the first time for us to speak out loud
12 the experiences that we had had where we felt belittled and
13 trodden over, and we were accepted by each other, and that was
14 a really radical moment in my own life where I felt like I was
15 seen and understood by people who shared my belief system.
16 These are other Christians who had experienced things similar
17 to me and -- and knew me in a way that was new to me.

18 However, I was stalked, followed, sexually harassed,
19 sexually assaulted on campus, and it was largely ignored by the
20 University and the people who were employed specifically to
21 protect me. So I felt unsafe on campus but safe with my queer
22 peers.

23 Q. And then later on in that same declaration, in
24 paragraph 41, you said, quote, "The first group of LGBTQ+
25 people I met was not safe."

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1 Can you describe a little bit what you meant by that?

2 A. Yeah. The first people that I met on campus, one of them
3 would ultimately go on to sexually assault me. So that
4 doesn't -- it was an unsafe experience.

5 So I would point out it sounds as though my words are
6 being twisted a little bit. The experience of going into an
7 entirely new community -- George Fox was a completely new place
8 to me. I had visited campus only twice before paying tuition
9 and rolling and moving in on campus. This was a completely new
10 group of people that I had never met before, and I didn't even
11 know the kind of person that I wanted to be there. It was
12 going to be a long process of opening up and exploring what
13 college was going to look like for me, as -- as I think most
14 high school students look forward to.

15 And it's extremely common in the first semester of college
16 for vulnerable incoming students to experience sexual assault.
17 There's a period in that first semester where the likelihood of
18 that statistically goes up an incredible amount. So I -- that
19 experience isn't unique to me, and it's not really unique
20 because the person who sexually assaulted me happened to be
21 another queer person. It was because I was in a completely new
22 environment and still trying to find out who I wanted to be and
23 what kind of -- what kind of friend groups I was going to be a
24 part of, and those were difficult decisions to make. Ones that
25 were not -- I wasn't protected by the University during them is

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1 what I'm trying to say.

2 Q. Okay. So one thing I did not see in any of your
3 declarations is any sort of a description that you were afraid
4 of any kind of disciplinary action or getting kicked out of
5 school. Do I have that right -- that you have not experienced
6 that?

7 A. I have not experienced that kind of retaliation from the
8 University yet, though I don't believe it's out of character
9 from the University; and if such retaliation were to happen, I
10 would not be protected.

11 Q. Okay. So let me close with this question: Given how
12 difficult it is, and I understand what you have shared here and
13 how difficult it's been, why did you choose to stay at
14 George Fox all this time?

15 A. That's a complicated question but, again, one I have had
16 to answer a great many times. The -- the reasons that I chose
17 George Fox initially didn't change. I wanted to go to a
18 university to continue learning about and growing my faith. I
19 studied theology at the school that I go to. It's part of --
20 it's something that I believe in and want to be intertwined in
21 my education. I came to a Christian school because I love
22 Jesus and I wanted to continue to learn about ministry. I
23 wanted to stay close to my family. It's important to me that I
24 am in close proximity to my siblings so that I'm able to
25 protect and provide for them. It's important to me that I go

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1 to a school where I feel like my professors are accessible to
2 me. The classroom sizes are small enough. There are a hundred
3 billion different factors that go into choosing a university.
4 And the reasons that I chose Fox remained important to me.

5 What I didn't sign on for when I went to Fox was to
6 experience discrimination on the basis of gender and sexuality.
7 That's not an inherent part of Christianity, and it's -- it's
8 not -- it's not a given. It's not something that I deserve to
9 experience nor should I have expected it.

10 Yeah, that's my answer. The reasons that I enrolled in
11 Fox are the same reasons that I stayed.

12 MR. GREY: Very good. I appreciate your candor and
13 your vulnerability. That's all the questions I have.

14 THE WITNESS: Thank you.

15 MR. SOUTHWICK: Thank you, Audrey. Nothing further
16 from plaintiffs.

17 THE COURT: May I ask you a question? I don't
18 believe you have told us your major. What's your major?

19 THE WITNESS: Sure. I'm a double degree student,
20 actually. So I'm earning one degree in English and a separate
21 undergraduate degree in sociology with a minor in theology.

22 THE COURT: And this has sort of been tapped into but
23 not really covered. You said you had a number of scholarships
24 at George Fox. How are you financially able to attend college?

25 THE WITNESS: I am completely financially independent

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1 from my parents. I receive no financial support from them at
2 all. So the way that I'm able to attend college is through
3 student loans, both private and federal, grants through the
4 state, FAFSA funding at the federal level, and scholarships
5 that are -- come from George Fox based on the departments that
6 I have chosen to be active in, as well as a couple of
7 independent scholarships that have to do with organizations I
8 volunteered with.

9 THE COURT: And I guess I, again, heard maybe
10 something more when you talked about it. It would appear that
11 when you were early at George Fox and you came out, is that
12 when you were -- became financially independent? You were very
13 quickly made independent?

14 THE WITNESS: Yes, that's right. I have been
15 attending college in some form or fashion since I was 15 or 16.
16 I started going to community college and paying for that out of
17 pocket on my own. Attending college wasn't something my
18 parents were really willing or interested in providing for
19 financially, and I knew that for quite some time. But because
20 of the relational strain of me moving out of my parents' house,
21 which was not really something that they wanted, and also the
22 strain of me coming out and into myself and becoming a person
23 that wasn't exactly what they -- exactly what they wanted when
24 they had kids, we -- we have a very fractured relationship, and
25 I haven't received any kind of financial support from them

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1 since then, not for housing or bills or medical or anything
2 like that.

3 THE COURT: And you said you were just a few terms
4 away from graduating; correct? Graduating --

5 THE WITNESS: Yeah, that's right. I have this
6 semester to finish up and one more, and then I'm finished.

7 THE COURT: What are your plans?

8 THE WITNESS: I would like to go to law school. I'm
9 interested in civil rights.

10 THE COURT: Very fair answer. Thank you for your
11 time. I appreciate your testimony. I appreciate your candor,
12 and I think you will make an impressive lawyer.

13 THE WITNESS: Thank you so much for your time and for
14 hearing me.

15 MR. SOUTHWICK: Thank you, Audrey.

16 THE COURT: May this witness be excused?

17 MR. SOUTHWICK: Yes.

18 THE COURT: Thank you.

19 Next witness.

20 MR. SOUTHWICK: Plaintiffs' next witness is
21 Elizabeth Hunter, and I believe she has appeared on the screen.

22 THE COURT: Yes, she has. If you can say just
23 anything, it will pop your screen up. Except I think you have
24 to turn on your mic. I think you're on mute.

25 MS. HUNTER: There we go. I should be great now.

Hunter - D

1 THE COURT: Ms. Hunter, would you raise your right
2 hand.

3
4 FAITH ELIZABETH HUNTER,
5 called as a witness in behalf of the Plaintiffs, being first
6 duly sworn, is examined and testified as follows:

7
8 THE WITNESS: I do.

9 THE COURT: Please state your full name for the
10 record and spell your last.

11 THE WITNESS: Faith Elizabeth Hunter. Last name
12 H-u-n-t-e-r.

13 THE COURT: Thank you. Go ahead.

14
15 DIRECT EXAMINATION

16 BY MR. SOUTHWICK:

17 Q. All right. Thank you. So your full name is
18 Faith Elizabeth Hunter, but you go by "Elizabeth"; is that
19 right?

20 A. That's correct.

21 Q. Great. So I'll refer to you as "Elizabeth" during our
22 questioning today.

23 Can we start just by telling us a little bit about where
24 you grew up and what kind of home environment that was for you?

25 A. So I grew up in Texas -- in parts of Texas. I was born in

Hunter - D

1 the Carolinas, I then moved to Texas when I was 6. I was in
2 foster care until the age of 9, and then I was rehomed to a
3 conservative Christian family who many people would consider an
4 occult. They were part of the Advanced Training Institute cult
5 group, and I lived with them until I was 20, and then I went to
6 Bob Jones University.

7 Q. And so how did you make that transition from the religious
8 community and family that you described to -- to going to
9 Bob Jones?

10 A. So I had always wanted to go to college, and I had told
11 that -- I had told my parents I had wanted to go to school
12 since I was, like, 13 or 14. They made it pretty clear to me
13 that if I went to a secular school that they would disown me.
14 If I went to even a pretty conservative Christian school, like
15 Baylor, my dad told me he would disown me.

16 So I had very few options, and I applied to Bob Jones
17 because my parents used Bob Jones homeschooling books, and so I
18 assumed Bob Jones was not on the disownment list. I was proven
19 correct there. I applied and was accepted to start in 2015,
20 so --

21 Q. So you said you were about 20 years old when you started
22 as a freshman?

23 A. Yes. I think I turned 21 my freshman year.

24 Q. What did you want to study at Bob Jones?

25 A. So I started out with a major that my parents told me was

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1 acceptable to becoming a homemaker, which was education, and I
2 had homeschooled my two younger sisters. So I really loved
3 teaching. It's something that -- I love storytelling and
4 teaching. But once I started in education, I realized that I
5 like journalism more. So I switched to journalism, and I
6 focused on TV reporting for local TV news.

7 Q. And did you do any -- did you have an on-campus job or
8 internship at Bob Jones for that?

9 A. Yes. So starting my junior year, I worked with
10 WBJU Media, which was our on-campus TV station.

11 In my senior year, I was the campus TV station director.
12 So I ran a staff of, like, 12 students, and we did weekly TV
13 news broadcasts, and that was exactly what I wanted to do when
14 I graduated. So it worked out perfectly. It was what I was
15 passionate about. It took most of my week, and I absolutely
16 loved that part of my life.

17 Q. And at some point did something happen at Bob Jones that
18 took that away?

19 A. Yes. So starting my junior year, I started to realize
20 that I was not straight. And I had not ever, like, dated
21 anyone or, like, actively engaged in any, like, relationship
22 dating life, but I started to tell some friends that I thought
23 I was queer and I started to be, like, following people online
24 who were LGBTQ and Christian, because I was trying to
25 understand if I could be, and so starting my senior year, I had

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1 been online in these communities. And I said on June 1st,
2 because I was not on campus, and so I thought it was, like,
3 fine for me to say whatever I wanted on Twitter, since I was
4 not a student on -- in June I was not a student. I said,
5 "Happy Pride," and made some other, like, Pride Month comments,
6 without outing myself. I just was like "Happy Pride" to people
7 who are queer, and I never named myself as LGBTQ.

8 And then in the -- as the semester went on, when my senior
9 year started, I was reading several books that had LGBTQ
10 characters in them. I was writing a book that had a LGBTQ
11 character in it. I met my favorite author, who wrote one of
12 these books, and, like, took a picture with her and had several
13 other tweets that, I guess, showed support for LGBTQ people,
14 and in November of my senior year I was called into a meeting
15 with my school administration. And because of my support for
16 LGBTQ people, they had assumed that I was queer. They forcibly
17 tried to out me and get me to confess to being homosexual. And
18 through the process of that, I was removed from my campus
19 student leadership position. I was fired from the TV station.
20 I was not allowed to work with it anymore, and I was put on
21 disciplinary probation.

22 Q. That seems like a lot to change pretty fast.

23 A. It was. It was a huge --

24 Q. What was that -- yeah, what was that shock like for you?
25 How did it feel? You were in your senior year. Tell us what

Hunter - D

1 that experience was like.

2 A. Yeah. So I had always been, like, a pretty good student.
3 I absolutely loved being in college. And while I disagreed
4 with my school about several different things, specifically
5 with, like, political stuff and how they responded and how male
6 students treated other women on campus, I had never, like, been
7 an adversary. I had never gotten in trouble for anything my
8 entire time there.

9 And so then to be called in with a meeting with, like, the
10 head of Student Life, like one of the top three men on campus,
11 and to have my entire Twitter, like, printed and gone one by
12 one through dozens of Tweets and everything to be taken out of
13 context and for them to be told that I was incendiary and a
14 troublemaker and I couldn't even work with something like the
15 TV station because I could no longer represent the University
16 because I might be queer and -- and I was not actively, like,
17 out to anyone, and so they were assuming my sexuality and then
18 forcing me to renounce same-sex marriage that the Supreme Court
19 had at that time ruled was legal and something I could not do
20 as a person. As a Christian, I don't think it was my right to
21 tell somebody whether they can or cannot marry. And, yet, the
22 University said I must agree with them on their policy or I
23 would lose -- like, I would be on disciplinary probation.

24 And I was just, like, absolutely shocked that I didn't
25 have freedom of thought. And that was not something I had

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1 signed away when I signed my student life conduct. That was
2 not listed in the code of conduct, that I had to agree with the
3 University. It -- and then for my sexuality, we -- sexuality
4 to be assumed just because I -- that I'm a supportive person of
5 LGBTQ people was a shock to me, and there was nothing I could
6 do to convince them I was either straight or queer because they
7 had already made up their mind.

8 Q. Can you take us into that room a little bit? Where did
9 you meet? How long did you meet? What was that meeting like?

10 A. Well, it was in the Student Life office, and it was -- it
11 started Friday at 2:00. I had work at 4:00, but I had to miss
12 work for it. So it was from 2:00 to 5:00. It was, like, three
13 hours, and I was just -- I felt like I was a member of the
14 Inquisition, where, like -- like, I was just raked over the
15 coals for three hours and was told if I reached out for help
16 that would show I was not repentant and therefore I would
17 actually be expelled as a student.

18 They didn't want to expel me because they said they didn't
19 want me to return to my parents' house because my parents --
20 were terrible people and they didn't want me to return there.
21 And they -- but they said if I didn't return to my parents,
22 they assumed I would reach out to LGBTQ people online, and they
23 didn't want me to do that. So they said, "We are not going to
24 expel you. We want you to stay a student because we want you
25 to repent and be right and renounce any homosexuality," and I

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1 really didn't have any other options. Like, I'm going to
2 graduate in one semester, and I can't -- if I leave Bob Jones
3 my credits won't transfer in many ways, and at that point I
4 was, like, 23, 24 years old. I think I was 24. I might have
5 turned 24 the next -- I can't remember. Math is not my strong
6 suit. But I felt very cornered.

7 And, yeah, I was completely voiceless in many ways. I was
8 not there to defend myself. I was there to be accused and then
9 punished.

10 Q. And how did that impact the remainder of your time at
11 Bob Jones? How did things change for you?

12 A. Well, not only did I lose, like, a vital part of my life,
13 which was the TV station and my work, but I -- I lost other
14 positions. I was a leader in my school society, which is like
15 a sorority, but a Christian college version. I lost my
16 position in leadership there. I ended up dropping out of the
17 sorority because I felt like everyone -- or the society because
18 I felt like everyone knew what had happened, and I was, like,
19 really embarrassed, and I just dropped out and lost, like, a
20 sisterhood that I had had for three years and did not get to
21 graduate with the graduating seniors in that society. So that
22 was really, really hard.

23 And I had -- I was -- for the first -- I had never been
24 suicidal until that. I remember the weekend after I was just
25 like, "I do not want to live anymore" because I didn't -- I

Hunter - D

1 didn't feel like -- like, the entire TV station staff knew what
2 had happened. These kids I worked with, like 12 students, and,
3 like, my department head with the journalism staff, the
4 journalism department, emailed me. He was like, "I heard what
5 happened. I'm praying for you."

6 I felt like everyone on campus assumed I was queer at this
7 point, even though I never had come out. Even at that point I
8 did not -- could not have told you what my sexuality was,
9 except that I didn't feel like I was straight. I felt
10 completely unsafe, and I was being monitored. So I got in
11 trouble on a Friday. I was in a required counseling session on
12 Monday, and they -- the person who had spoken to me on Friday
13 came into the meeting and not only was he upset about what
14 time -- or what I had said to another student about what had
15 happened, but he told me I had misrepresented the school in
16 telling another student why I got in trouble.

17 He had also told me that he -- like, the quote -- I would
18 quote -- he said, "We saw you privated your Twitter at, like,
19 3:48." So I knew, like, my entire online presence and
20 everything I said was being monitored. So I lost any ability
21 to just be myself because everything I said online was being
22 completely watched.

23 And I just -- I felt like a little zombie the rest of the
24 semester. I was graduating in May, and so I just put my head
25 down and did my homework. And it was really hard because the

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1 following February they had a conference on marriage and
2 sexuality. So for five days they brought in all these speakers
3 who just spoke about how homosexuality -- like, LGBTQ
4 identities don't exist, and it was -- it was really, really
5 difficult because even voicing a differing opinion could get me
6 in trouble. So I just had to sit through daily messages and
7 sermons and lessons on this.

8 And before that point, before my senior year, I would have
9 easily, like, talked to other students and been like, "What do
10 you think?" And I felt like it was safe to have a different
11 opinion. But at that point, my senior year, I had to just be
12 completely silent. And if anyone knows me, being silent is
13 just not comfortable for me at all.

14 And it was extremely hard to feel like I -- that I was
15 monitored and watched the rest of the year.

16 Q. And so, Elizabeth, you were put on a form of disciplinary
17 probation?

18 A. That's correct.

19 Q. You were terminated from your on-campus position in the
20 media department. You were sent to mandatory counseling with
21 the Dean of Women; is that right?

22 A. That's correct.

23 Q. And in addition to that, you were forced to pay a monetary
24 fine to Bob Jones?

25 A. That's correct. For violating the student code of

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1 conduct. But when I violated the student code of conduct, the
2 school did not list anything that I violated. They just said
3 that I violated the spirit of the code of conduct because I did
4 not break any rules; so I just existed as myself, and they said
5 that violated the spirit of their student handbook.

6 MR. SOUTHWICK: I would like to go ahead and
7 introduce a couple of exhibits, and one of those is the Bob
8 Jones University Student Handbook. So let me make sure I have
9 this pulled up correctly, and I'll share my screen.

10 Plaintiffs' exhibit list includes the Bob Jones University
11 policy language, which is this student handbook, and I would
12 like to introduce this as Plaintiffs' Exhibit No. 13.

13 THE COURT: Hearing no objection, it's received.

14 BY MR. SOUTHWICK: (Continuing):

15 Q. Elizabeth, I want to read some of this policy language and
16 then I'll --

17 A. Can I ask a question?

18 Q. Sure.

19 A. Can I ask is this this year's or 2018? Which handbook is
20 this?

21 Q. Good question. I believe that this is the current --
22 yeah, 2021.

23 A. Because it said advocacy for LGBTQ rights is prohibited,
24 but I do not believe that was prohibited in the 2018 handbook.
25 I just noticed that, and I believe that is an add -- something

Hunter - D

1 they added after I got in trouble.

2 Q. Gotcha. Thanks for that clarification.

3 Let me see. All right. So this is the current handbook,
4 and it sounds like there may have been some language added, as
5 you just testified, in the aftermath of the discipline against
6 you.

7 But do you recall that during the period in which you were
8 at Bob Jones there was some policy language -- aside from
9 advocacy, there was some policy language regarding homosexual
10 conduct, same-sex dating, and those kinds of things?

11 A. If I -- yes. I remember reading it when -- before I
12 signed the handbook, and it felt like it was a statement of
13 doctrine. Like, we believe marriage is between a man and a
14 woman. And Bob Jones is a university. It is not a
15 Christian -- it's not, like, a denominational school. So there
16 are lots of differences of doctrine among professors and
17 students, and I felt like the handbook allowed me to -- like, I
18 could sign it and also doctrinally disagree and I would still
19 be fine, if that makes sense.

20 Q. Yeah. That's a good explanation.

21 I want to ask you about some of the specific language and
22 how it makes you feel as someone who was a student there.

23 I'm just going to read this -- this paragraph. And,
24 again, the advocacy piece, it sounds like, was not there at the
25 time.

Hunter - D

1 All right. So Bob Jones University's current policy
2 language says: Consistent with our commitment to God's design
3 for gender identity, the public advocacy for or act of altering
4 one's biological sex through medical transition or transgender
5 expression is prohibited. Any same-sex dating or advocacy for
6 such is also prohibited.

7 Being someone from the LGBTQ community who was exploring
8 their sexuality while a student at Bob Jones, how does this
9 kind of policy language make you feel?

10 A. Well, I feel very uncomfortable with it because students
11 come to these schools and, as you grow, you learn more about
12 yourselves and as -- the same with me. I grew and learned more
13 about myself. And even exploring who you are as a person is
14 prohibited, in a way, because you cannot advocate for -- like,
15 you cannot accept public policy that is inclusive of LGBTQ
16 people.

17 I remember, as a student, many times people would say,
18 "Well, I don't agree with -- like, I would never be in a
19 same-sex marriage, but like, same-sex marriage is the law of
20 the land. You should treat LGBTQ people fairly." And that was
21 a common statement, like, students and I would make in our
22 public policy debates in a public policy class, such as
23 political science or even journalism; and at this point, in
24 this -- the manner in which the handbook is laid out, we can't
25 even advocate for good public policy that treats all people

Hunter - D

1 constitutionally right under what the Supreme Court has ruled
2 are equal rights because even advocacy for LGBTQ people is now
3 prohibited.

4 And it's not just me saying this. I have had current
5 students reach out to me and tell me that they feel unsafe
6 because they support LGBTQ people, not that they are queer
7 themselves, even though some of them might be, but even having
8 an LGBTQ friend is not safe anymore.

9 Q. I want to point your attention to elsewhere in that
10 Bob Jones University policy and catalog. There's an
11 Appendix B, and it describes further statements about human
12 sexuality and -- at the university, and this section I will
13 read from is Context for Human Sexuality. And towards the
14 middle, there's a paragraph that states, "Furthermore, the
15 Bible specifically names as sinful and prohibits any form of
16 sexual activity between persons of the same sex, polygamy,
17 incest, bestiality, adultery, and fornication of any sort,
18 including pornography."

19 How does it feel to be lumped in with bestiality, incest,
20 and adultery? How does that feel to you, given everything you
21 have experienced in your life?

22 A. I feel like it's absolutely disgusting. Polygamy -- well,
23 I should say incest, bestiality, those sorts of things,
24 actively harm and create victims, whereas my sexuality doesn't
25 create victims. It's not harmful to society in the way that

Hunter - D

1 bestiality and incest and other harmful sexual activities are,
2 and it's just contrary to the general consensus among the
3 scientific community about how human sexuality works.

4 Q. Thank you, Elizabeth.

5 MR. SOUTHWICK: I want to introduce Exhibit No. 14,
6 which is Elizabeth's Title IX Complaint.

7 Any objections?

8 THE COURT: Hearing none, it will be received.

9 BY MR. SOUTHWICK: (Continuing):

10 Q. Elizabeth, you've already testified today to a lot of what
11 is in this Title IX complaint, but I just want to note for the
12 record that you filed this on July 24th of 2021. And what are
13 you -- why did you file it? What are you hoping that it
14 accomplishes?

15 A. Well, I think the Department of Education and the Office
16 of Civil Rights should protect my civil right to have existed
17 as a student at Bob Jones. I shouldn't have been discriminated
18 against because of my assumed sexuality. And Title IX is
19 supposed to protect our civil rights, including our sexuality
20 and the rights of who we are and who we exist as, and that is
21 what I -- I hope to see the Department of Ed taking action to
22 protect not only me but other students in similar situations.

23 Q. And is it your understanding that when you were a student
24 going through the grueling experience that you described, that
25 because of the religious exemption to Title IX, you would

Hunter - D

1 essentially not have had access to the Office of Civil Rights.

2 Is that your understanding?

3 A. That's correct. I -- I feel if I had filed this as a
4 student, I would have gotten in more trouble because I would
5 have been having to file in a Title IX office at Bob Jones, and
6 they would have informed the administration that someone had
7 filed a complaint that they were being discriminated against
8 based on their sexuality.

9 Q. That's an important point, Elizabeth. And is it your --
10 because we -- we've seen this pop up, and I believe it's your
11 experience that Title IX offices at Bob Jones University,
12 they're often either run by the same people or in communication
13 with the Honor Code office. The same office that can punish
14 students for being LGBTQ is the only office you would
15 essentially have available for making a claim of
16 discrimination. Is that your understanding?

17 A. That is correct.

18 MR. SOUTHWICK: All right. And the final document
19 I'd like to introduce with respect to Elizabeth would be
20 Exhibit No. 15. Bob Jones University Exemption Assurance.

21 Any objections?

22 THE COURT: I don't hear any. Go ahead. It's
23 received.

24 BY MR. SOUTHWICK: (Continuing):

25 Q. Elizabeth, are you familiar, at least somewhat, with the

Hunter - D

1 history of Bob Jones University requesting and receiving
2 religious exemptions from the Office of Civil Rights?

3 A. I am.

4 Q. And it looks like there's been a number of exemption
5 requests, as indicated in this document. Some of them have to
6 do with reproductive rights; others have to do with gender and
7 sexuality. And as the documents show, all of the exemption
8 requests have been approved. And I want to ask you how -- you
9 know, how does it feel, knowing that your own government has
10 given its stamp of approval to Bob Jones' policies and
11 practices that harmed you so greatly while you were a student?

12 A. It's very disturbing. Especially when you realize that
13 the government doesn't have to. The IRS actively took
14 Bob Jones to court because of their interracial dating ban, and
15 they highlighted the discrimination that Bob Jones perpetuated
16 until the early 2000s, and they lost their nonprofit status for
17 it. So we know the government has the teeth. I should say the
18 enforcement. They can enforce -- like, they can enforce laws
19 that protect people, and they're choosing not to. And they
20 have, in the past, taken Bob Jones to court for allowing
21 discrimination.

22 It wasn't under Title IX. It was for their nonprofit
23 status. So it's two different. I want to make you sure I'm
24 aware that it's two different things. I want to say that
25 there's not lacking in precedent for enforcement of fighting

Hunter - D

1 for nondiscrimination.

2 Q. You referenced the interracial dating ban that was the
3 subject of the 1983 Supreme Court case, and you stated just now
4 that that ban was in effect until the year 2000. Is that
5 correct?

6 A. I think the early 2000s. I'm not an expert on Bob Jones'
7 history. It was obviously not in effect when I went there, but
8 people still talked about it.

9 Q. And I believe that you said in one of your classes it was
10 actually raised by another student in the context of, you know,
11 how can Bob Jones maintain these anti-LGBT policies and get
12 federal funding and exempt tax status when it wasn't allowed to
13 do that under -- with respect to interracial marriage?

14 Could you describe that incident for us?

15 A. Yeah. We had a meeting -- a class that was taught by one
16 of the administrators. So I take this with a lot more weight
17 because an administrator of the school told us this. But in
18 our class, someone raised this question of would -- how would
19 Bob Jones respond if in -- in a similar situation to what
20 happened with their interracial dating ban, and the
21 administrator said it would be difficult to prove in court that
22 this is actually our religious belief because we already told
23 them that interracial dating -- banning it was a religious
24 belief of ours, and then we changed our mind. So what is to
25 say we won't change our mind with LGBTQ on campus when we

Hunter - D/X

1 previously already changed our minds about a belief we took all
2 the way to the Supreme Court?

3 Q. And as I think that you hinted at a little bit, is it your
4 understanding that Bob Jones is continuing to discriminate
5 against LGBT students under the policies that we've just looked
6 at and that you've, in fact, heard from some current students
7 who are experiencing that kind of suffering?

8 A. Yes, that is -- that is -- all of that is true. That is
9 my understanding.

10 MR. SOUTHWICK: Well, thank you, Elizabeth. Thank
11 you very much for your testimony. I don't have any further
12 questions for you at the moment, but some of the lawyers for
13 the other parties may.

14 Thank you very much.

15 THE COURT: Mr. Davis, for the Department of Justice
16 go ahead.

17
18 CROSS-EXAMINATION

19 BY MR. DAVIS:

20 Q. Good afternoon. Can you hear me okay?

21 A. I can.

22 Q. I just have a few questions for you. You graduated from
23 Bob Jones University in May of 2019; is that correct?

24 A. That's correct.

25 Q. And your Title IX complaint was filed with the Department

Hunter - X

1 of Education in July of 2021?

2 A. That's correct.

3 Q. And to your knowledge, your Title IX complaint remains
4 pending with the Department of Education; is that correct?

5 A. That's correct.

6 Q. Have you filed any lawsuit directly against Bob Jones
7 University?

8 A. I have not.

9 MR. DAVIS: No further questions. Thank you.

10 THE COURT: For the intervenors?

11 Excuse me? For the intervenors? Anyone?

12 MR. LIPPELMANN: No questions for the religious
13 school intervenors.

14 THE COURT: I don't see Mr. Schaerr, and I don't
15 see -- I don't see the other intervenor lawyer who was just --
16 just crossed.

17 MR. SCHAERR: We're here, Your Honor, and Mr. Prince
18 is going to do this examination. He's trying to get his
19 microphone working.

20 THE COURT: Okay.

21 MR. PRINCE: That's correct. Can you hear me,
22 Your Honor?

23 THE COURT: You're muffled.

24 MR. PRINCE: Can you hear me?

25 THE COURT: You're still muffled.

Hunter - X

CROSS-EXAMINATION

BY MR. PRINCE:

Q. Ms. Hunter, thank you for taking the time to talk to me today. My name is Joshua Prince. I am representing the Council for Christian Colleges and Universities. I don't have very many questions for you. Many of the questions that I had were already asked by the Government defendants. So I'll keep this very -- as short as I can.

To begin, and I'm sure you've heard this sentiment expressed with the questioning of the other plaintiffs, I have no desire today to undermine the testimony that you have given or the things that you've experienced, and I want to set that as a baseline.

I do just have a few questions. In your testimony, I didn't hear any suggestion that the Department of Education pushed the policies that you object to onto Bob Jones University. Is there any information that you have to suggest otherwise?

A. No, there is not.

MR. SOUTHWICK: Objection. Speculation.

THE COURT: Go ahead and answer the question.

THE WITNESS: I was going to say I don't have any evidence to the contrary.

BY MR. PRINCE: (Continuing):

Q. And you have no personal knowledge of the Department of

Hunter - X

1 Education ever encouraging students to discriminate against
2 their LGBT peers; is that correct?

3 A. That's correct.

4 Q. And at least currently you are aware that the Department
5 of Education considers Title IX to protect students on the
6 basis of sexual orientation and gender identity; is that
7 correct?

8 A. That's correct, yes.

9 Q. Now, I was wondering what your understanding was as to
10 what would happen if you were successful in having the Title IX
11 religious exemption removed from Bob Jones University.

12 Do you have -- do you have a general idea of what would
13 occur?

14 A. I would -- let me say this: I know removing Title IX
15 religious exemptions doesn't automatically change university
16 policies because the universities can just remove themselves
17 from receiving federal funding, and I understand that is a
18 possibility, and many universities have said they would do
19 that.

20 But for universities who have changed their policies in
21 the past, like Bob Jones changed their policies and now
22 receives nonprofit status because they no longer uphold
23 discrimination and -- with interracial dating, I think it could
24 move the clock forward on universities, such as Bob Jones and
25 others, understanding that holding onto homophobia in Christian

Hunter - X

1 practice is not a beneficial part of their university. It is
2 not a tradition that they need to keep.

3 And while I don't believe that the Department of Education
4 can force them to change our policies, I believe the -- the
5 idea of them losing their religion exemption exception could
6 move the clock forward on them one day changing those policies
7 as they did with interracial dating bans.

8 Q. I understand that that's your testimony; but as you sit
9 here today, you don't have any direct knowledge that Bob Jones
10 affirmatively would change its policy in the absence of federal
11 funding; is that accurate?

12 A. That is accurate.

13 Q. Ms. Hunter, you testified that at the time that you
14 entered Bob Jones University you knew it was a Christian
15 school; is that right?

16 A. That right.

17 Q. And if I understood your declaration, one of the reasons
18 that you went to it was because it was a Christian school. Is
19 that accurate as well?

20 A. That is accurate.

21 Q. And you understood at the time that Bob Jones had a
22 document called Its Position on Marriage and Human Sexuality;
23 is that right?

24 A. That right.

25 Q. And you understood at the time that those students who

Hunter - X

1 were enrolled at Bob Jones University were expected to follow
2 that policy; correct?

3 A. Yes, that right.

4 Q. And from what I understand, you largely followed it
5 throughout your time at Bob Jones. Is that accurate?

6 A. That is completely accurate.

7 Q. I'm going to turn to what we have premarked as the
8 Defendant Intervenor CCCU's Exhibit 14. If you'll bear with
9 me, I'm in charge of my own exhibits here, and so I will do my
10 best to work through this as smoothly as possible.

11 Can you see my screen here?

12 A. That's correct. I can see it, yeah.

13 Q. And do you recognize this document?

14 A. Yes. It's the student handbook.

15 Q. And was it the student handbook at the time that you were
16 at Bob Jones University?

17 A. It looks like it's from 2016 to 2017; so yes.

18 MR. PRINCE: Your Honor, at this time I move for the
19 admission of CCCU's Exhibit 14.

20 MR. SOUTHWICK: No objection.

21 THE COURT: Thank you. It will be received.

22 BY MR. PRINCE: (Continuing):

23 Q. Now, I understand that the policy has changed slightly
24 since -- since you were there, which is one of the reasons that
25 I wanted to talk specifically about the handbook at the time

Hunter - X

1 that you were a student.

2 A. I appreciate that.

3 Q. I've turned to Appendix B. Do you see that there?

4 A. Yes, I do.

5 Q. And is this the position on marriage and human sexuality
6 that we previously discussed?

7 A. I'm -- there could be differences. Or are you talking
8 about what you have just asked me about?

9 Q. The one I asked about, yes. Yeah.

10 A. Okay. Thank you.

11 Q. I understand that your counsel asked you some questions
12 about the context for human sexuality in the handbook. I don't
13 want to belabor that point, but I do want to talk very briefly
14 about some things that were skipped over in the list of things
15 that Bob Jones University considered to be contrary to biblical
16 views. Is that okay?

17 A. Yes. Yeah.

18 Q. Sure. So we read this sentence together in your direct
19 examination, and what it says is "Furthermore, the Bible
20 specifically names as sinful and prohibits any form of sexual
21 activity between persons of the same sex."

22 Did I read that correctly?

23 A. You did.

24 Q. But what was skipped over, I know -- I couldn't help but
25 notice -- is the reason that Bob Jones lists. And as I read

Hunter - X

1 it, it says, "Romans 1:26-27; I Corinthians 6:9-10; and
2 I Timothy 1:10." Is it fair to say those are scriptural
3 verses?

4 A. You can say they're verses from scripture, yes.

5 Q. Specifically from the New Testament; right?

6 A. Yes.

7 Q. So at least Bob Jones considers its policy on human
8 sexuality to be based in biblical truths; is that accurate?

9 MR. SOUTHWICK: Objection. Calls for speculation.

10 THE COURT: Sustained. Let's move on.

11 BY MR. PRINCE: (Continuing):

12 Q. Let's go down to the statement about human -- sorry -- the
13 statement about gender identity.

14 Do you see that?

15 A. I do see that.

16 Q. This says that God created man and woman in His image as
17 two distinct but equal genders which he intends to use for His
18 glory.

19 Did I read that correctly?

20 A. You did.

21 Q. And here, again, Bob Jones includes Genesis 1:26-27. Is
22 it fair to say that that is a scripture from the Old Testament?

23 A. It is.

24 Q. Now, during your direct examination -- and I'll stop
25 sharing the screen here.

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1 During your direct examination, one of the things you used
2 to describe this policy is it was disgusting. Do I remember
3 that correctly?

4 A. I think I used "disturbing."

5 Q. Disturbing. My apologies.

6 A. It's -- who knows?

7 Q. It's been a very long day, and I certainly understand
8 that.

9 So if I misheard, I apologize. But disturbing works, as
10 well, if that was your testimony.

11 So based on your use of what word, is it fair to say that
12 you disagree with the theological understanding as expressed in
13 the Bob Jones Student Handbook?

14 A. Yes. But I think I was saying that I would find it
15 disturbing that people would lump bestiality with homosexuality
16 because -- or incest because someone who abuses children is not
17 the same as some -- or animals is not the same as someone who
18 lives with someone that they love.

19 Q. I understand.

20 A. I'm not -- there's -- I am not sure if I'm disagreeing
21 with the theology there or the cultural implications of that
22 statement.

23 Q. So let me try to rephrase that slightly, then.

24 Is it fair to say that you disagree with Bob Jones'
25 understanding on the biblical grounding for its human sexuality

Hunter - X

1 policy?

2 A. Yes.

3 MR. PRINCE: I have no further questions, Your Honor.

4 THE COURT: Any redirect?

5 MR. SOUTHWICK: Nothing further from plaintiffs,
6 Your Honor.

7 THE COURT: Ms. Hunter, I have a question. It was
8 raised that you were given a fine by the school. No one said
9 the amount. Do you remember the --

10 THE WITNESS: If I recall correctly, it was \$75.

11 THE COURT: \$75. And you've graduated; is that
12 correct.

13 THE WITNESS: I have.

14 THE COURT: You kept your head down and graduated.

15 THE WITNESS: I did.

16 THE COURT: What are you doing now?

17 THE WITNESS: I'm a news producer.

18 THE COURT: Where do you work?

19 THE WITNESS: I -- can I keep that off the record?

20 THE COURT: You're -- so you have a functioning job
21 with a news program?

22 THE WITNESS: Yes. And my new station has asked that
23 I not -- because I live in the same town as Bob Jones; so
24 they've asked me not to name them.

25 THE COURT: More than fair. I appreciate that.

1 Thank you very much for your time today. It was very
2 helpful. Thank you.

3 THE WITNESS: Thank you.

4 MR. SOUTHWICK: Thank you, Elizabeth.

5 THE COURT: You may be excused. You're free to go.

6 Further witnesses for the plaintiff?

7 MR. SOUTHWICK: All right. Your Honor, we have two
8 final witnesses today. We have Kalie, and then we have our
9 final expert witness.

10 I know that we're at 4:47. If the Court is able to go
11 past the 5:00 hour, up to 6:00, I think that we might be able
12 to get through both of these witnesses.

13 THE COURT: It would have been nice to know this a
14 little earlier.

15 MR. SOUTHWICK: Sorry about that.

16 Kalie, hang tight.

17 THE COURT: We really didn't have a heads-up, and I
18 have -- there's some plans that have to be addressed. We'll do
19 the one witness. We'll do Ms. Hargrove, and then we'll save
20 the expert for tomorrow.

21 It appears, in looking at this submission for what we have
22 for witnesses, that that will mean you have -- you'll finish,
23 and then we'll have the Randolph Willis and Ms. Yao and then
24 the intervenor's witness. So I think we'll be able to get
25 through tomorrow. I don't necessarily think we need to go

1 until -- go tonight. So you might want to excuse your expert
2 so they're not waiting for time to see me. I think that just
3 makes sense.

4 MR. SOUTHWICK: All right. Thank you, Your Honor.
5 We will.

6 THE COURT: I just want to note for the record that I
7 have full-time externs who have been working on this, and they
8 had to leave a little early to attend a class they had, and I
9 want to make sure that they have as much access to the record
10 as possible, and so I -- in order to make sure that they have a
11 participation in this hearing, I don't want to have an expert
12 witness when they're not here.

13 MR. SOUTHWICK: Understood.

14 THE COURT: Thank you. Call your next.

15 MR. SOUTHWICK: All right. Our next witness is
16 Kalie Hargrove.

17 THE COURT: Ms. Hargrove, if you just say something,
18 you'll pop up. Can you just --

19 MS. HARGROVE: Hi.

20 THE COURT: There you go.

21 Please raise your right hand.

22 ///

23 ///

24 ///

25 ///

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1 KALIE HARGROVE,
2 called as a witness in behalf of the Plaintiffs, being first
3 duly sworn, is examined and testified as follows:
4

5 THE WITNESS: I do.

6 THE COURT: Thank you. Please state your full name,
7 spelling your last, and then I'll turn it over to your counsel
8 for direct examination.

9 Go ahead.

10 THE WITNESS: My name is Kalie Hargrove. Hargrove is
11 spelled H-a-r-g-r-o-v-e.

12 THE COURT: Thank you.

13 Go ahead.
14

15 DIRECT EXAMINATION

16 BY MR. SOUTHWICK:

17 Q. Thank you. Good evening, Kalie. I know it's a little bit
18 late where you are. Are you speaking to us from Atlanta today?

19 A. A suburb; but, yeah.

20 Q. Atlanta area.

21 All right. Well, thanks for being here with us today. I
22 really appreciate you taking your time for this testimony. I
23 would like to ask a few, kind of, background questions. If you
24 could let the Court know where you grew up and where you
25 eventually went for college.

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1 A. Yeah. So I grew up in Oregon. I did -- I was born in
2 Klamath Falls but grew up 17 out of my 18 years in Brookings,
3 Oregon, and all 12 years of school in Brookings, Oregon. I
4 grew up in a very Christian home, part of -- part of the
5 Independent Christian Church there, and grew up in kind of a
6 community within that Independent Christian Church. And
7 because of the -- because of the type of community it is, it
8 was very interconnected. There's only a couple Bible colleges
9 that were associated with that tradition, one of them being
10 Boise Bible College in Idaho.

11 So after graduating Boise Bible College -- or after
12 graduating high school, I went to Boise Bible College. Did
13 four years and got a bachelor's degree in worship ministry.

14 But during that time, that last year, I kind of wanted to
15 shift away from music and do something more -- more scholarly
16 within Christian education and decided to go to -- go to
17 Lincoln Christian University, which is the -- which is one of
18 the few seminaries that offers a master of divinity within the
19 Independent Christian Church tradition. And so, actually, I
20 went to Lincoln Christian University in 2009, and I did three
21 semesters there; but, unfortunately, the -- the economy and the
22 fact that I had gotten -- recently gotten married and we had
23 recently had a kid, it was not easy to stay in school and
24 support my family. So I -- I left Lincoln, and I joined the
25 Air Force, and I spent just under nine years in the Air Force.

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1 But during the last about a year I decided to take classes
2 again, again at Lincoln, because that's where I had started.
3 It was still my tradition. And so I took two classes, starting
4 in 2019, in the -- took two classes while I was still in the
5 military for both the fall semester and the spring semester,
6 and then I actually left the military a year early on my
7 contract because I left as a conscientious objector because I
8 felt because of my religious beliefs that I couldn't continue
9 to take part in -- in killing people, essentially, because it's
10 kind of what I -- what I was doing in the military.

11 So once I left, I started taking classes full time. I
12 took classes full time fall 20 -- fall of 2020 and spring of
13 2021 and then one class during the summer of 2021 at Lincoln.

14 Q. Thank you, Kalie. That's a helpful explanation of how you
15 got from Oregon all the way out to Lincoln Christian.

16 And you were taking classes online, I take it, given that
17 you live in Georgia and Lincoln is in Illinois; is that right?

18 A. Correct.

19 Q. And were you paying for your education, at least in part,
20 with the Montgomery GI Bill because of your military service?

21 A. Correct. So, yeah, I paid for all of my schooling during
22 that second portion using my Montgomery GI Bill before -- when
23 I had gone before, I used student loans; but, then, you know, I
24 used the military -- I used the military help or aid.

25 Q. Wonderful.

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1 At some point in the last year, or so, would you -- would
2 you feel comfortable talking to the Court about your gender
3 identity and your transition?

4 A. Yeah. So I -- I decided to go back to Lincoln because,
5 again, like I said, it was my tradition and it was a school I
6 went to before. And so I reapplied. I -- I registered. I got
7 everything all ready. I was all set for classes. And I did
8 that in the spring, leading up to that fall of 2019, when I was
9 going to take classes; but then in the summer of 2019, after --
10 I mean, it was after a very long process of evaluating what I
11 believed, looking at the Bible, understanding what I understood
12 of human gender and sexuality and, like, after an incredibly
13 long process, like, that summer, I finally accepted the fact
14 that I was transgender and came to that realization during that
15 summer.

16 Do you want me to keep going on that?

17 Q. Yeah. So that was the summer -- this past summer; is that
18 right?

19 A. No. So that was -- that was the summer of 2019. And at
20 that point, like, I didn't know what I was going to do. Like,
21 I didn't start transitioning or anything. I knew that I was
22 transgender; but, I mean, there's just a big difference in
23 recognizing something and knowing what you're going to do about
24 it.

25 I started -- I made the decision and started taking

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1 hormones in April of 2020 and started the process of
2 transitioning then, and -- yeah.

3 Q. And how is that -- and you're -- you're a parent and
4 you're a spouse. So how has that been as a parent and a spouse
5 and transitioning and going to school? How did you do with
6 managing all of that?

7 A. I mean, it was a lot. There was a lot going on at that
8 time just because of that. Because my wife and I had our
9 entire, like, relationship thinking that we were, you know,
10 cisgender heterosexual, and that's just -- it wasn't true.

11 So there -- like, obviously, like, the relationship
12 between my wife and I somewhat changed. Not actually too
13 terribly much, but I think there was a lot of worry that there
14 was going to be a lot of change. But, I mean, honestly, we --
15 we had already, like, had what would be considered opposite
16 gender roles for our cultural -- you know, our cultural world.
17 So, like, a lot of things didn't really change between that;
18 but, like, that uncertainty of not knowing what was going to
19 happen.

20 My kids, it was confusing for them at first; but, like,
21 honestly, my kids have been some of the -- some of the most
22 supportive and easiest to understand. But one of, like, the
23 biggest stressors between me and my wife -- or not necessarily
24 between us, but, like, for us, is the fact that we both come
25 from incredibly conservative families.

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1 My -- my wife is a missionary kid. Like multi-generation.
2 My -- like I said, I went to Boise Bible College. My grandpa
3 went to Boise Bible College and was the second graduating class
4 of that university, if I remember right. It was like second or
5 third. I had multiple uncles go to Boise Bible College and
6 graduate, and all of them became preachers. So, like, me
7 coming out to them was -- it -- things didn't go well. My
8 parents still -- still hardly talk to me or, like, accept my
9 gender identity. I -- like, my wife's parents don't hardly
10 talk to us anymore either.

11 So, like, yeah, that put -- that puts a strain on our
12 relationship. Especially, like, in that in-between time,
13 whenever, like, we know that this is coming but we haven't told
14 them yet, and so, like, you know -- like, it's almost, like,
15 relationships have -- have an expiration date, and we were
16 worried that that was true. And whenever -- whenever I came
17 out to them, it proved to be right.

18 Q. And so during this process of your transition, the changes
19 for you and your family, how close did you get to completing
20 your degree at Lincoln Christian University?

21 A. So I was basically -- I was basically five classes away,
22 according to, like, the class list. When it came up as six
23 because one of the classes was a three-semester, one-credit,
24 like, internship or mentorship, and I was on the third credit
25 of those three; but, essentially, I -- I had three real

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1 classes -- should have had three real classes this semester, of
2 fall 2021, and then two more classes of spring 2022, and I was
3 done.

4 And, actually, I would be finishing the program with three
5 extra credits.

6 Q. And then at some point this past summer, something
7 happened that changed the course of your educational program;
8 is that right?

9 A. Correct. So the school found out that I am transgender
10 and that I made the decision to transition, and they simply
11 sent me an email, giving me, basically, an ultimatum of either
12 I drop out within, like, that grace period of the semester
13 where I can drop out and not be charged for the credits, or I
14 could -- I could stay in the semester, face charges, and -- I
15 mean, essentially reading between the lines, be kicked out
16 because -- because I'm transgender.

17 And so, like, facing that -- I really didn't have a choice
18 other than to drop out. Because, you know, I don't necessarily
19 have a few thousand dollars just laying around. Like I said,
20 my education was being funded by the Montgomery GI Bill which
21 means I pay the school and then -- then the VA pays me;
22 however, if I don't finish a semester, I have to pay back all
23 the money that -- that the VA gives me.

24 So, like, in theory, like, I'm just paying back money that
25 they gave me, but I would still have to be paying for those

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1 credits and, like, that's a few thousand dollars. You know,
2 I -- we're -- we're currently a single-income family while I
3 try to go to school. We don't just have a few thousand dollars
4 to blow on me getting expelled from school. That -- I mean, so
5 it's not really a choice. Whenever it comes down to it, it --
6 I was -- I mean, essentially I was strongarmed into leaving so
7 it would look like it was my choice. But there was no choice.
8 Let's be honest.

9 Q. Kalie, I'm sharing my screen here and putting up a copy of
10 what I believe is the letter, and I have redacted your name
11 because they were using your dead name, and so I just went
12 ahead and redacted that. But is this the letter you're
13 referring to that essentially -- you know, effectively expelled
14 you, even though they did give you an opportunity to go through
15 an appeals process, which was pretty much stacked against you.
16 But this is the letter you were referring to; is that right?

17 A. Correct.

18 Q. And this is dated August 26, 2021. So that's just a
19 couple of months ago; is that right?

20 A. Yes. Correct.

21 MR. SOUTHWICK: And I would like to introduce this as
22 Exhibit No. -- Plaintiffs' Exhibit No. 16. Any objections?

23 THE COURT: I'm hearing none. It will be received.

24 BY MR. SOUTHWICK: (Continuing):

25 Q. And just for everyone's clarification, I just want to make

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1 sure -- is it clear to you from this document -- and I'll
2 highlight some language there -- that the basis for this
3 disciplinary action and pushing you out of the school was
4 that -- as it states here, "It seems you have chosen to
5 identify as and live as a transgender woman." So is it -- was
6 it your understanding that that was the basis for the action
7 taken against you?

8 A. Correct.

9 Q. And looking in here, just to clarify a few things, it
10 says, "If you choose to remain enrolled at LCU, this matter
11 will be referred to the disciplinary committee for further
12 action."

13 And so is that what you were discussing? Essentially,
14 yes, you are transgender. If the school is going to discipline
15 you for that, there's no point of going through the
16 disciplinary committee because you would essentially lose out
17 and have to pay the government back money for your education.
18 Is that what you were referring to?

19 A. Correct. Like, you just look at it, and that's basically
20 what it says. A disciplinary committee. And if you find
21 out -- a disciplinary committee is just made up of people from
22 the school. Like, there's no, like -- there's no, like, third
23 party; there's no, like, whatever. But then when it comes down
24 to it, yeah, I'm transgender. I admit that. I'm okay with
25 admitting that. I'm proud of who I am.

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1 But I would -- like, seriously, I chose to be transgender
2 and live as a transgender woman? No. I am transgender. I
3 have always been transgender. I maybe didn't realize it for a
4 long time, but that is what I have always been. So I didn't
5 choose to be transgender.

6 But you read -- you read this, and it's clear that they --
7 they just -- they don't care. They see me -- see me and who I
8 am as my identity as a choice that I made and don't see me as
9 a -- the real person. They see me as an idea, an issue that
10 can be discussed by a disciplinary committee. Like, it's --
11 it's not right.

12 For me to go in and face a disciplinary committee that's
13 already decided that because I'm transgender I shouldn't exist
14 at their school, like, there's no winning that. And to enter
15 that type of situation would have been detrimental to my -- to
16 my mental health on top of having to deal with being kicked out
17 of school for who -- being who I am in the first place.

18 Q. So I wanted to ask you, Kalie, you know, you've -- being
19 someone who has served her country and who's a taxpayer and was
20 using the GI bill to pay for their school, what was your
21 reaction to getting kicked out of school like this? How did it
22 feel?

23 A. It really sucks.

24 Like, I can remember exactly where I was whenever I saw
25 this. I was sitting in the parking lot of my -- of my oldest

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1 kid's school, and I got a buzz that an email came in. I looked
2 at it. It was from the school, and it -- the email said,
3 "Notice of charge"; but I misread it and read "Notice of
4 change." And I was like, all right, well, what -- what's
5 changed? So I opened up the email and then it says, "Please
6 see, like, notice of charge," or whatever. I read it "change"
7 again. And so I, like, opened up the attachment, thinking,
8 like, maybe it's because of a new advisor, because that had
9 just happened, because my old advisor had left. You know, I
10 don't know.

11 I opened it up just to find out that. "Oh, here, we found
12 out you're transgender. You either leave the school, or you're
13 going to go against a disciplinary committee."

14 And, like, that moment of just realizing that everything
15 that I had done at that school, everything that I had done,
16 like, in Bible college, like all of that didn't matter. Like,
17 I was numb when I read it. But like -- like you said, I am a
18 parent. I have -- I have kids. I couldn't process my emotions
19 yet because I had to pick up my -- I had to pick up my kid. I
20 had to drive home. I had to make dinner. I had to finish
21 living, you know, my normal life. So I -- I pushed it down as
22 much as I could and was numb for a few hours.

23 I got my kids in bed, and I went upstairs and just broke
24 down and cried and, like, it was awful. Like, I don't -- like,
25 it's really hard to explain because the Independent Christian

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1 Church, its nondenominational, okay. They don't have an
2 oversight denomination, a hierarchy, or whatever. They are
3 loosely attached to each other based off of the fact that they
4 are an Independent Christian Church. And because of that, they
5 often look to the schools and the universities to be kind of
6 that guiding light for the denomination or whatever you call
7 it -- a nondenominational group.

8 So, in essence, this school kicking me out and being,
9 like, "No, you're no longer welcome here," is not just losing
10 my school, like, it's losing the entire tradition that I've had
11 for over 30 years. And just in one letter where they are able
12 to take who I am, everything that I have done, and reduced it
13 down to "You have chosen," they are not even dealing with me as
14 a person. They are dealing with me as an issue. People are
15 not issues.

16 And, yeah, you know, I actually thought Title IX protected
17 people. I saw -- I knew that Lincoln was a Title IX school. I
18 read their language on discrimination. Unfortunately, a lot of
19 schools will say, "We don't illegally discriminate." Yeah,
20 that's misleading because they legally discriminate. There is
21 a legal way for them to discriminate against people like me.

22 So I thought Title IX meant something. I thought I would
23 be protected. I friggin' served my country. I gave up nine
24 years of my life and killed more people than I can say to
25 essentially uphold an idea that I should be discriminated

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1 against because these institutions believe I shouldn't exist in
2 their presence.

3 And going further, like, not only that, at the same time,
4 and I -- yeah, you know, I do take full credit for this or
5 full, like, admission of this. I used my own personal social
6 media to say that I got kicked out of seminary. You know,
7 personal thing. I put it on my personal social media, and it
8 ended up a lot of people seen it. I have literally had
9 hundreds of people specifically reach out to me to tell me that
10 being kicked out of school was good; that being kicked -- that
11 they wanted to contact the school and thank them for kicking me
12 out.

13 I had somebody tell me, "Oh, it's too bad you're a
14 Christian because Christians can't commit suicide." I
15 literally have people telling me to kill myself because they
16 believe that I shouldn't exist in the same world as them, and I
17 get that that -- those people aren't the school, but the school
18 is perpetuating a world view and an idea that people like me
19 shouldn't exist. They are giving the foundation of a world
20 view that -- that people are able to take up and tell me that I
21 should kill myself.

22 I just checked the Human Rights Campaign, and this year
23 has matched last year in number of transgender people that have
24 been killed, and there's still almost two months left. People
25 want transgender people killed. These schools are literally

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1 using a religious exemption to -- to -- to discriminate. And
2 people see that schools can discriminate and they see that it's
3 okay, and they act in a way that perpetuates that.

4 And Title IX is supposed to be there to protect me.
5 Title IX is supposed to be there to protect students, but
6 they're -- but these institutions are told that they can
7 discriminate against me to maintain this world view that it's
8 okay to discriminate against transgender people, and it just
9 means nothing. Title IX means nothing with that loophole, with
10 that exemption.

11 Nobody is safe if there's an exemption.

12 Q. Well, thank you, Kalie, for sharing that. I think you
13 explained the situation very well.

14 Now, I do want to note for the record, because some of the
15 lawyers might ask you about this, but you currently are not a
16 named plaintiff in this litigation; but do you anticipate
17 requesting to be made a plaintiff in this case?

18 A. Yes.

19 Q. And have you recently filed a Title IX complaint with the
20 Office of Civil Rights against Lincoln Christian University
21 for -- for them kicking you out in August of this year?

22 A. Yes.

23 Q. Now, I want to read some language. The plaintiffs, in one
24 of our briefs, we cite a case. *Johnson v. Lincoln Christian*
25 *College*. It was called Lincoln Christian College at the time.

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1 And this was in the 1980s. This is -- this is, I believe, one
2 of the first known instances of a college expelling an LGBTQ
3 student, and I want to read the language because I think that
4 it's eerily reminiscent of what you have been describing. I'll
5 share this just as a demonstrative here.

6 Ewald was the dean, and Johnson was the gay student. The
7 case describes -- says, "You all told Johnson that he would be
8 dismissed from LCC" -- again the same institution as you
9 attended -- "because of his alleged homosexuality and that the
10 reason for his dismissal would be stamped across his
11 transcript. From that meeting, Johnson understood that he
12 would be dismissed regardless of what had happened at the
13 hearing" -- a disciplinary hearing. "Afraid that the
14 accusation of homosexuality being imprinted on his transcript
15 would destroy his career goal, Johnson withdrew from LCC."

16 Would you say that you felt and experienced something very
17 similar to that, but with respect to your gender identity, by
18 this very same institution?

19 A. Yes. And I would like to add when I first went to Lincoln
20 in 2009 the student that showed me around specifically told me
21 that they -- that Lincoln had been in some local news because
22 they had kicked out a lesbian student. So Lincoln -- Lincoln
23 has a history of discrimination against LGBTQ that it does not
24 appear they intend to change.

25 Q. So, lastly, Kalie, can you explain why you filed the

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1 Title IX complaint? What are you hoping to accomplish by
2 filing that complaint and by joining the lawsuit as a plaintiff
3 in this case?

4 A. I mean, so it's really plain and simple. The
5 U.S. Department of Education is picking a side. They're
6 picking a side by providing financial aid to these institutions
7 because -- because of their decision to have this exemption,
8 these schools are continuing to lure people in with a guise of
9 being non-discriminative, and it's not true. They use
10 language, because they probably have lawyers tell them what
11 language to use, that makes it seem like they -- the students
12 won't face discrimination, but it's not true. It's all a lie.
13 It's an exemption that gives them the ability to discriminate.

14 And the fact is that the U.S. Department of Education is
15 funding that. By providing aid, they are funding that. They
16 are funding my discrimination. I am paying tax dollars to fund
17 my discrimination. The -- this -- it's -- I mean, it's kind of
18 like you put -- you put your money behind what you support, and
19 the truth is the Department of Education is supporting these
20 institutions that are telling me that I shouldn't exist in the
21 same space as them. They're telling me that my history and
22 tradition in that tradition is not valid. That's telling me
23 that even though I came to accept myself as transgender because
24 I took the lessons and principles and everything that they
25 taught at this seminary and I actually applied them and came to

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1 the conclusion that who I am is not only okay but I reflect the
2 creativity of a creative God. I learned that at this
3 institution, and they kicked me out.

4 And the U.S. Department of Education is continuing to side
5 with them and will continue to side with them until they
6 actually do something about the religious exemption, and you --
7 that means that they are siding with discrimination. It means
8 that they are siding with perpetuating the world view that it's
9 okay for LGBTQ people to be discriminated on in public because
10 a school is a public place. That's what the Department of
11 Education is siding with.

12 And the thing is is that they're siding with an idea that
13 I shouldn't exist instead of siding with people. I'm a real
14 person. Title IX is supposed to be there to protect me, but
15 it's not. It's actually there to maintain my discrimination.

16 MR. SOUTHWICK: Thank you, Kalie. That was very well
17 put. I don't have any further questions on behalf of
18 plaintiffs.

19 Kalie, some of the other lawyers might have some questions
20 for you.

21 THE COURT: Mr. Davis, for the Government, go ahead.
22
23
24
25

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CROSS-EXAMINATION

BY MR. DAVIS:

Q. Good evening. I have just a few questions. You mentioned that you filed a Title IX complaint with the Department of Education; correct?

A. Correct.

Q. And you filed that complaint just last week; is that right?

A. Correct.

Q. And, to your knowledge, that Title IX complaint remains pending with the Department of Education; is that right?

A. Correct.

Q. Have you filed any lawsuit directly against Lincoln Christian University?

A. So, no, because why would I whenever there's a legal -- a legal way for them to discriminate against me? Like, it's legal for them to do it. Why would I do that? I'm saying that that needs to change; that that shouldn't be legal. So, no, I haven't sued them because they legally discriminated against me.

Q. And you don't plan on suing them; is that right?

A. I don't have a case. If Paul tells me I have a case, then maybe I will. But let's be honest. I'm here and -- I'm here in this hearing right now because there is no case because it's legal. It's legal discrimination.

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1 MR. DAVIS: Thank you. No further questions.

2 THE COURT: For the intervenors?

3

4

CROSS-EXAMINATION

5 BY MR. LIPPELMANN:

6 Q. Hi, Kalie. My name is Mark. Thank you for your testimony
7 today. I only have a few questions. First, are you currently
8 enrolled as a student at any religious institution?

9 A. I am.

10 Q. Okay. Which school are you -- are you enrolled in?

11 A. I am enrolled at United Theological Seminary of the Twin
12 Cities.

13 Q. And when were you admitted to United Theological Seminary?

14 A. About three weeks after I got -- after I left Lincoln.

15 Q. Okay.

16 A. Because they specifically saw what happened to me and
17 reached out to me and got me into classes this semester, and I
18 had to -- you know, I brought up money before with Lincoln. I
19 had to make that decision. I'm taking fewer class this
20 semester because that's what I could afford. Because I am not
21 able to use my GI bill this semester because I have to get that
22 approved before the semester starts. So being kicked -- being
23 kicked out of Lincoln meant I can't use my GI bill this
24 semester.

25 And, again, that's legal because of religious exemption.

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1 Q. Okay. You mentioned -- I believe the time frame was
2 summer of 2019. You said it was as -- a result of theological
3 reflection on God's creation that led to your transgender
4 identity; is that correct?

5 A. Yeah.

6 Q. Did I understand your statement on direct?

7 A. Oh, correct. That's what I said.

8 And, actually, if you read the evidence that was placed
9 on -- it mentions an article where I share my -- in the article
10 I share my experience, and it was brought up with the last
11 witness where Genesis was brought up, and my understanding of
12 gender comes directly from Genesis. Because, in Genesis, God
13 creates light and dark; day and night. But God also creates --
14 did I say "Jesus"? I meant God, if I said "Jesus."

15 God creates day and night, but God also creates dawn and
16 dusk. God creates the separation of water between water and
17 land, but also there's swamps. God separates water in the --
18 to the sky and on -- underneath the land, but there's also fog.
19 God creates animals that live in the sea and in the air but
20 also created mosquitoes. So every single category of creation
21 that there is has a spectrum, and so I got to -- God created
22 them male and female and used the same logic that -- none of
23 the other categories were meant to be understood as fixed,
24 binary categories; so why is male and female?

25 So that was the basis of my theological changing point.

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1 And so, yeah, like, I saw the end of the last plaintiff
2 that referenced Genesis, and that is a really weak argument
3 because it's an inconsistent reading of Genesis 1.

4 Q. So it sounds like you have -- you've developed some strong
5 opinions about the interpretation -- the proper interpretation
6 of Genesis.

7 Is it fair to say that you disagree with Lincoln Christian
8 College's interpretation on that subject?

9 A. Once you show me their interpretation of gender
10 specifically, I will answer that question; but if you look at
11 their handbook, they do not reference scripture whenever they
12 talk about gender identity. They only say that it is
13 considered unbiblical and sexual immorality.

14 So as far as I can tell, they do not base it -- base
15 gender identity as a -- something that they derived from
16 scripture since they do not reference it like they do with
17 homosexuality.

18 Q. Okay. Fair enough.

19 So whether it's based in scripture or not, is it fair to
20 say that you disagree, as a matter of theology, on whether
21 becoming transgender is sinful?

22 A. I mean, that -- I can't answer that question. It's an
23 Independent Christian Church University. It is foundationally
24 non-credal. So that is kind of like the gold -- the golden
25 star of the denomination is that it's not credal. So they

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1 don't necessarily have, like, a theological position on it.

2 Do I know that they -- do I know that they are unaccepting
3 of transgender people? Yeah. They kicked me out. So I -- I'm
4 not a hundred percent sure on the answer that you're looking
5 for because it sounds like you're asking for their theological
6 basis and my understanding of their theological basis, but I
7 don't know it because it's a non-credal -- its a non-credal
8 seminary.

9 MR. LIPPELMANN: Okay. Those are all the questions
10 that I have. Thank you.

11 THE COURT: Anyone else? Redirect?

12 MR. SOUTHWICK: Nothing further for plaintiffs,
13 Your Honor.

14 THE COURT: Thank you very, very much for your time
15 and your testimony. I appreciate it greatly, and we went a
16 little long. I hope we didn't impinge too much on your
17 evening. Thank you, and thank you for taking the time. You're
18 excused.

19 MR. SOUTHWICK: Thank you very much, Kalie.

20 THE WITNESS: Thanks.

21 THE COURT: So for purposes of tomorrow, are -- so
22 we're in good shape. Am I correct?

23 MR. SOUTHWICK: I believe so. Our expert has
24 confirmed that he can go first in the morning.

25 THE COURT: Thank you. Please express my gratitude

1 for his willingness to be flexible.

2 And then everybody else will be ready after that?

3 Everybody is on mute. I can't hear.

4 MR. DAVIS: My apologies. Can you hear me now?

5 THE COURT: I sure can.

6 MR. DAVIS: Great. The federal defendants will be
7 ready after that, Your Honor. Thank you.

8 THE COURT: And the intervenors? You're all
9 coordinated?

10 UNIDENTIFIED SPEAKER: Yes, Your Honor. We'll be
11 ready.

12 THE COURT: All right. Is there anything I need to
13 know for tomorrow? Any heads-up? Anything? If not, have a
14 good evening. We'll recess, and I'll see you tomorrow at
15 9:00 in the morning.

16 MR. SOUTHWICK: Thank you, Your Honor.

17 THE COURT: We'll be here early. People will be here
18 early if you need to get on and test everything out so we can
19 start on time.

20 Thank you. Have a good evening.

21 (Hearing concluded.)
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C E R T I F I C A T E

Elizabeth Hunter, et al. v.

U.S. Department of Education, et al.

6:21-cv-00474-AA

Preliminary Injunction Hearing

November 4, 2021

I certify, by signing below, that the foregoing is a true and correct transcript, to the best of my ability, of the video conference proceedings heard via video conference, taken by stenographic means. Due to the audio-visual connection, parties appearing via speakerphone or cell phone or wearing masks due to coronavirus, speakers overlapping when speaking, speakers not identifying themselves before they speak, fast speakers, the speaker's failure to enunciate, background noises and/or other technical difficulties that occur during video conference proceedings, this certification is limited by the above-mentioned reasons and any technological difficulties of such proceedings occurring over the video conference at the United States District Court of Oregon in the above-entitled cause.

A transcript without an original signature, conformed signature, or digitally signed signature is not certified.

/s/Jill L. Jessup, CSR, RMR, RDR, CRR, CRC

Official Court Reporter
Oregon CSR No. 98-0346

Signature Date: 11/17/2021
CSR Expiration Date: 9/30/2023